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File No. S. Bij. 2/46

Legal DEPARTMENT
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Printed
1946

Subject:— Suits: Bijapur.

Civil Suit No. 48 of 1945

Venkatesh Swamirao Deshmukh of Yalgur — Plaintiff

Vs.

The Province of Bombay and 19 others — Defendants

Claim Rs. 2,31,562/—

Re: For restoration of Paragana Walan lands and for a declaration that plaintiff is the walandar of the same walan as defendant No-6

First Appeal No. 483 of 1948.

File No. S. Bij. 2/46.

Std. Scott. Slip 24-B

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Bijapur Civil Suit No. 48 of 1945.

The Suit is for restoration of certain Pargana Watan lands in the Bijapur District and for a declaration that plaintiff is the Watandar of the same Watan as defendent No. 6. This claim was negatived by the revenue authorities. It appears that in former times the plaintiff's family rendered the gumasta service to the family of the defendant No. 6 who are the original Deshmukh Watandars. In consideration of this service some of the Watan lands were granted to the plaintiff's ancestors by the original Watandars. In 1865 Kalawa the senior widow of the Watandar made certain alienations of the properties in the suit in favour of Shriniwasrao the grandfather of of the plaintiff. Litigation ~~were~~ then ensued between Shriniwas and Kalawa which resulted in Shriviwas obtaining possession of the properties in 1875. In 1886 Padappa son of the junior widow of the watandar obtained a Gordon settlement sanad of the watan properties and thereafter in 1887 he filed a suit against the sons of Shriniwas (then deceased) for a declaration of his title to the lands alienated by Kalawa in favour of Shriniwas. This suit was finally decided by the Privy Council (Padappa Vs. Swamirao I.L.R. 24 Bom. 556) in which it was held that the Kalawa held possession of the watan property as a watandar and in no other character, that consequently she cound not make alienations which would be valid against her own heir and that as the heir of Kalawa, Padappa could assert her title against the alienees. The effect of this decision was that Padappa was entitled to all the Inam rights in the villages and the alienation made by Kalawa were held to be valid only ~~or~~ for the duration of her life. Subsequetly there was a long series of litigation between Swamirao and his brother (Shriniwas' sons) on the one hand and Bhimabai (widow of Padappa) on the other in respect of several lands in these villages in which Swamirao claimed various rights over the lands alienated to Shriniwas, and

urther contended that he was a watandar of the game watan. owever in second Appeals Nos. 865 of 1929 and 223 of 1931 the igh Court considered these questions and held that they were barred as resjudicata on account of the Privy Council decision in Padappa's suit.

The present suit is the outcome of the agitation started by the plaintiff after his father Swamirao's death in 1932. The plaintiff substantially wants to reagitate the same questions which have been finally decided by the Privy Council and the High Court. The principal defence is therefore of resjudicata. The previous history of the case has been extracted from the reports in 18 Bom. 22 and 24 Bom. 556.

The defence of the suit may be sanctioned on the lines of the appended brief.

R.M. 7/5/1946

L. D. 21 MAY ... A

A.A.L.A. RK 8/5
R.L.A.
Secy R.D. 20.5.46

Recm 16/5/46

UR to R.D.
No. 3745
dt. 18.5.46

In the Court of Civil Judge, Senior Division,

At Bijapur.

Specila Civil Suit No. 48 of 1945.

1. Venkatesh Swamirao. Plaintiff.

Vs.

1. The Province of Bombay and others. Defendants.

Herein the Deft No.1 by his written-statement states as under:-

1. The plaintiff's claim for restoration of possession is barred under section 4 clause(a) of the Bombay Revenue Jurisdiction Act 1876.

2. The plaintiff's claim in para 43(XII) of the plaint to amend the registers regarding the plaint property and to enter plaintiff's name in the revenue records is barred under section 4 clause(d) of the Bombay Revenue Jurisdiction Act 1876.

3. Under section 4 of the Pensions Act, 1871 this court has no jurisdiction to entertain this suit in so far as it relates to cash allowances for want of a certificate from the Collector under section 6 of the said Act. The plaintiff is thus not entitled to any relief in respect of the cash allowance in the absence of a certificate from the Collector.

4. The plaintiff's suit for a declaration that he is the representative watandar as set forth in para 1 of the plaint is barred under section 25 of the Bombay Hereditary Officers Act.

5. The allegations of the plaintiff in para 2 of the plaint that the family of the plaintiff is the "Watanic" Gumaste family of the said Deshmukh watan, that the here-ditary right of the family of the plaintiff in the watan was created in 1658 and that the Gordon Settlement Committee bestowed Deshmukhship on plaintiff's family ~~was~~ are denied.

6. The plaintiff is not and his ancestors were not Watandars of the same watan as that of defendant No.6 or his ancestors as contended by the plaintiff in para 3 and in other paras of the plaint.

Not necessary to be disturbed may be retained RK

7. The properties in suit formed ~~part~~ Part of the Watan lands of Bhujangarao Desai. He died on 27-9-1947 having behind him two widows Kalawa and Ramawa. Ramawa gave birth to a son Padappa on 15-9-1948. Before his birth the Revenue Authorities had placed the watan under sequestration which continued until 1863 when Kalawa's title to the watan was recognized and she was put in possession some time in 1865, under the terms of the ~~Gur~~ Gordon Settlement. [Allegations of] Plaintiff's allegations to the contrary in paras 4 and 5 of the plaint [which are inconsistent with what is said above] are denied.

8. On 15-9-1865 Kalawa mortgaged with possession two villages of Areshankar and Wadwadigi to plaintiff's grand father. Subsequently she created further changes in his favour. After a few years Kalawa directed villege officers not to pay revenue to Shriniwas, who thereupon filed a suit against her in 1870. The suit was decreed and in execution Shriniwas purchased the two villages and other chavrat lands. In 1873 he filed another suit to recover the revenues of the years 1870-71 and 1871-72 and got a decree. As a result of this ~~lit~~ litigation Shriniwas was put in possession of the two villages and he was in possession till Kalawa's death in 1877. The allegations in paras 6 to 9 of the plaint which are not expressly admitted [in this para] are denied.

9. Padappa established his legitimacy in C.S.No.1299 of 1872 and the decree in that suit was confirmed in appeal and later by the High Court in Second Appeal. The Collector entered the watan ~~to~~ in the name of Padappa in 1878. After the death of Shriniwas in 1880, his son Swamirao obtained an order from the Commissioner to the effect that the revenue should be paid to Swamirao. Thereupon Padappa filed C.S.No. 1007 of 1887 in the Court of the First Class Sub Judge for a declaration that the bond passed by Kalawa to Shriniwas on 15-9-1865 was null and void and for possession of the two villages. The trial Court decreed the suit and in appeal the Privy Council held the Kalawa's mortgage to Shriniwas was void against Padappa and had no

force beyond her life. The allegations of plaintiff made in para 10 to 14 which are not expressly admitted in this para are denied. In execution of the decree of the Privy Council Padappa obtained possession through the court in the year 1900 and his name was entered in the Revenue Records. After the Privy Council's decision several suits were filed by Swamirao against Bhimabai and deft No.6 and also by Bhimabai against Swamirao and in these cases which went up to High Court in Second Appeal No. 865 of 1929 it was held that in view of the Privy Council decision which operates as resjudicata it was not open to Swamirao to say that the title of to the xxxx inam villages still subsisted in him either on account of his status as watandar or on the ground that Shriniwas had purchased the interest of Kalawa in the villages. A similar conclusion was reached in another series of litigation between the same parties which reached the High Court in Second Appeal No. 223 of 1931.

It is therefore submitted that

10. The plaintiff's contentions that on account of grant of two lands to plaintiff's family who were rendering gumasta service the plaintiff and his ancestors had become watandars of the same family as Deshmukhs, and that by virtue of alienations made by Kalawa and the court sales in execution of the decrees obtained against her Shriniwas had become full owner of the watan properties in dispute even as against Padappa and even beyond the life time of Kalawa are not correct and are barred [by resjudicata and] on the general principles of resjudicata [in view of the decisions and the decree in civil suit No.1007 of 1867, the Privy Council decision in Padappa Vs. Swamirao (I.L.R. 24 Bombay 567) and the decisions and decrees in second appeal No. 865 of 1929 and 223 of 1931.]

11. The decisions and decrees in the suits and appeals above referred to are binding on plaintiff and plaintiff's allegations and reasoning in paras 14 to 30 of the plaint are not correct, and not admitted

12. The plaintiff's allegations in paras 32,33,35 and 37 of the plaint against the correctness of the action taken and orders passed by the Revenue Authorities are not correct and are not ~~tenable~~ admitted. The plaintiff's allegations in para 40 of the plaint against Deft.No.1 and its officers and against the correctness of the action taken and orders passed by them are all denied.

13. The plaintiff's allegations in para 42(IV) of the plaint that all the decrees etc. against Swamirao have been obtained through fraud are not true and are denied. and this contention of the plaintiff cannot be gone into for want of particulars of the alleged fraud. The plaintiff has not given any particulars of his alleged fraud.

14. The plaintiff's suit is not in time and the reasons of the plaintiff in para 42 of the plaint to show that the suit is in time are not correct.

15. The plaintiff has no cause of action as stated in para 38 of the plaint. The plaintiff has no title to the suit property and his claim to it is denied.

16. The plaintiff is not entitled to any of the reliefs prayed for by him. He is not entitled to any mesne profits or damages and his claim to the same from the deft. is unfounded and is not tenable. The amount of mesne profits mentioned in para 43 of the plaint is grossly exaggerated. The relief referred to as XIX(XXIX) in para 43 of the plaint is vague. No such relief can be granted nor is the plaintiff entitled to such relief.

It is therefore submitted that plaintiff's suit be dismissed with costs.

District Government Pleader, Bijapur.

I, A.C.Anadi, B.A.LL.B., District Government Pleader Bijapur hereby declare that what is stated in paras 1 to 16 above is true on information received and believed to be true. Signed in Bijapur on

District Government Pleader, Bijapur.

Ex-28

Special Suit No.48 of 1945.

PAUPER.

In the Court of the First Class Sub Judge, Bijapur.

1. Venkatesh Swamirao Deshmukh Plfft.

Vs.

1. The Province of Bombay and 19 others. Defts.

Herein the plaintiff above-named begs to submit as under :-

1. The plaintiff has filed this suit for possession of the suit watan property under Watan Rights. And Deft. No. 1 the Province of Bombay has been added as party deft. on account of failure of duty by its servants.

2. The following facts are established by the Gordon Committee:-

I. That the plaint watan is made up of two parganas, Samat Parvati and Pargana Nidgundi.

II. That there are Takshims in this watan by name " Deshmukh Gumasta"1-

III. And that plaintiff's grand father Shrinivasarao is the holder of one Takshim covered by Sanad No. 2404. And Deft. No.1 does not dispute that the plaintiff's grandfather and plaintiff were and are heriditary deputies to the same watan namely Samat Parvati and Pargana Nidgundi.

3. The plaint property is situated in both the pargana i.e. in Badami, Muddebihal and Bagewadi Talukas.

4. One Padappa, the predecessor of Deft. No.6 and so-called heir of his step mother Kalawa, the holder of the watan and the alienor of the plaint portion of the Nidgundi Pargana, started litigations on wrong lines on the strength of Watan Act, which is not free from defects (please vide para 3 of the preface of the first edition printed in fourth edition by Mr. H.S.Phadnis), in respect of Nidgundi Pargana plaint portions against plaintiff's father, Swamirao, the heir of the alienee and a new person to the litigation.

5. In this litigation, plaintiff's father, has lost his watan rights in respect of Nidgundi Paragana portions and the said Padappa and his followers together with deft. No.6 have lost

their so-thought ownership over certain watan lands situated in Govt. villages of Nidgundi Pargana.

6. According to the findings of the Revenue Courts Swamirao remained Watandar to the portions covered by Sanad No.2404 and non-watandar to the Nidgundi Pargana portions. So also, are Swamirao's successor, viz. Deft. No. 2,3 and 4. In respect of portions of one and the same watan, the defts. 2, 3 and 4 are both watandar and non-watandar. This kind of awkward status has been wrongly approved by the servants of Deft No.1. In fact Swamirao and defts. 2,3 and 4 are non-watandars in respect of both the parganas.

7. But plaintiff was born by first wife of Swamirao in the life time of his grandfather and is a watandar having a heriditary interest in this watan. He is not bound and could not be affected by any acts of commission or omission by Swamirao as a grand-son in a Mitakshara joint-family, even by the partition effected in the year 1909 between plaintiff on the one side and Swamirao together with his other sons on the other as plaintiff's claims are not through Swamirao. Moreover, this partition is, in respect of nonwatan property only.

8. Swamirao died on 9-12-1932 and the plaintiff became entitled to hold the suit portions of the plaint watan free from all acts of commission adnd omission of his father. Since then the plain property wrongly is in the possession of the following defts:-

Defendants.		Their pleaders.
1. Pandurag Srinivas Parvati Deft.	2	N.V. Jorapur
2. Gurunath Swamirao Parvati. "	3.	V.P.Parvatikar
3. Venkatrao Parvatrao Parvatikar	5.	"
4. Shivanappa Yelgurddappa Desai Deft.	6.	N.P.Desai.
~~5. Chansangappa Balappa Desai~~	~~7~~	
5. Chandramappa Yelgurudappa Desai.	7	
6. Chansangappa Balappa Desai.	8	
7. Bhujangappa Appasaheb Desai.	9	
8. Yelgurdapa Erapa Nisbat Desai.	10	
9. Ramchandrappa Eerapa "	11	
10. Eerabasappa Eerapa "	12	
11. Moulasaheb Imamsaheb Walikar	13	
12. Budhesaheb Imamsaheb Walikar	14	
13. Karigoudapa Sultanapa Beradar	16	No Pleader(absent)
14. Province of Bombay Deft No.1		Mr. Angadi.

The servants of Deft No.1 improperly enjoined the other defts. and lastly having denied to exercise their power wrongly directed the plaintiff to the civil court. Hence this suit.

9. The suit property is big enough to yield crop worth Rs. 10,000/- a year and the mesne profits comes to more than double

the price of a particular land itself. And it is difficult to recover such a large amount from the respective defts. Deft. No.1 is legally bound to make up any deficit that may occur.

10. In these circumstances the plaintff prays that the suit property be entrusted to a Receiver pending disposal of this suit.

11. This may be communicated to the respective pleaders of the defts. named above.

12. It is further prayed that the land in possession of deft. No.16 has been transferred to the owner who is deft. No.8 (vide Gram Namuna No.6 of Wadwadgi. So, the deft. 16 may be deleted from the list of defts. as the mortgaged sum has been redeemed by the income of the said suit land. Hence the profits of the said land are to be calculated to and recovered from the deft. No.8 As the legal position of the remaining defts. remains unaltered it is not necessary that they should be appraised of this application.

For the reasons stated above it is requested that a receiver may kindly be appointed to take possession of all the suit property pending disposal of the suit or the property may be left in the possession of the respective defendants on taking property security for the past and futhure meane profits.

Bijapur.

4-4-1946. Sd/- V.S.Deshmukh.

The other side to say.

Sd/-

4-4-1946. Civil Judge, Sr.Dn. Bijapur.

This relates to Bijapur suit No.48 of 1945. The nature of the suit is explained in the note at slip A. The D.G.P. [Dharwar] Bijapur has forwarded two applications given by the plaintiff. The first is as regards the appointment of a Receiver. The application is as clumsy and fantastic as the plaint itself. It has been explained in the brief that this suit is barred on the principles of resjudicata. There is no case for the appointment of a receiver. The application should be opposed generally on the grounds stated in the written statement. There is no need to file a separate written statement by way of reply.

The other application is for the amendment of the plaint. Its copy sent by the D.G.P. is in Kanada language which I cannot read. The D.G.P. should be asked to send an English translation.

6/8/46

AH LR I agree.

6/8

D.S. AR, 7/8

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Ex. 4. Special Civil Suit No. 48 of 1945.

In the Court of F.C.Subjudge Bijapur.

1. Venkatesh Swamirao Deshmukh.... Plff..

Vs.

1. The Bombay Province & others... Defts.

Herein the Plff requests by his application(as follows:-). In the plaint there are minor mistakes through oversight. Hence amendment as follows should be made.

I. (In plaint) on page 1 after the occupation of deft 9 Bhujangapa Appasaheb as agriculture, " and officiating Patil of Kotikal Taluka Badami"(beaded); the residence of deft 17 Ramchandrappa Irbhadrappa Pattar " Madwadigi" be deleted and written as " Balbatti".

II. On page 10 of plaint in line 20 of para 31 apostraphe s in " 3's" be deleted and the words " and 4's " be added.

III. On page 11 (of the plaint) in line 2 the word " consequently" be deleted, and the word " consecutively" be written, and in line 5 of para 33 after the word "and " the words " the ~~law~~ bar of Resjudicata and " be written;. in line 4 of para 35 in place of words " nominal holder " the word "holder" be deleted and written as " watandar".

IV. On page 12 in respect of para 36, the letters " 36 A" should be written and Para 36 Should be written as " the Plff submitted an appeal to the Revenue Tribunal who dismissed it on the ground that his case was not one coming under the jurisdiction of the Revenue Tribunal. However it is ruled in Part II of the Tribunal ruling at page 113 that Government revenue not affected ".

V. On page 14 in line 1 the words " one land " should be replaced by " two lands " and at the end of the para begining with the words " As for Jat Inam" the words " The same kind of pleadings are in respect of Jat Inam S.No. of Madwadigi" be written.

VI. On page 16 in para 43 the figures " 173632 " after " mesne profits " be deleted and the figures " 263859 " be written; and after the words " on taking accounts " in the last line the words " from the date 1-4-1933 " be written; and in the same

line the figures " 231562 " occurring after the words " is Rs. " be deleted and written as " 321789 ".

VII. On page 18 in Roman figure Para XVII the words " i.e. Deft No. 1 " be added after the word " Govt ". At the end of para XVIII " together with future mesne Profits in full. " be added.

VIII. When filing Miscellaneous Number 32/44 copies of Record of Rights of lands of Nidgundi and Kasinkunti had not been received. Hence in the Schedule the names of Kabjedars and misstated. Further interest figures appear less. After calculating interest at intervals I have produced a Schedule now mentioning the figures arrived at. In this Schedule necessary corrections are made. It should be ordered that further work should be carried on according to Second Schedule. I have now produced copies of Record of Rights not produced hereto before, and they should be exhibitted.

20-11-1945.

Sd/- V.S. Deshmukh.

Verification.

Sd/- V.S. Deshmukh.

Notice to defts.

20-11-45.

Sd/-

Civil Judge, Sr.Dn.

Received the copy.

Sd/- G.V.Hiremath.
11-7-1946.

Seen.No copy supplied.

Sd/- N.P.Desai
Pleader for deft 6.

Sd/- N.V.Jorapur.

Sd/- V.P.P.

Sd/- A.C.A.

D.G.P.

Suits :

Bijapur.

For restoration of Pargana Watan lands and for a declaration that plaintiff is the *watandar* of the same *watan* as defendant No. 6.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3872.

Bombay Castle, 23rd May 1946.

Letter from the Collector of Bijapur, No. L.A.W. 176, dated the 25th February 1946—

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, BIJAPUR.

Civil Suit No. 48 of 1945.

Venkatesh Swamirao Deshmukh, of Yalgur .. .. Plaintiff;

versus

The Province of Bombay and 19 others .. .. Defendants.

Claim—Rs. 2,31,562.

Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 3871, dated the 23rd May 1946—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P. N. MOOS,
Secretary to Government.

G. R., No. 3872, L. D., dated the 23rd May 1946.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1946.

Copy forwarded for information and guidance to

Submitted after move
2. File in S Bij 146 (new file)

BIJAPUR CIVIL SUIT No. 48 OF 1945.

Chronological Statement of Facts.

1. The suit is filed in *forma pauperis* by one Venkatesh Swamirao Deshmukh against Government and nineteen other defendants for a declaration that he is the representative *watandar* in respect of the suit property forming part of the Pargana Deshmuka Watan of Samat Parvati and Pargana Nidgundi in Badami, Muddebihal and Bagewadi Talukas and that he is "the owner of the suit property". He also asks for possession with past and future mesne profits. The properties in the suit comprise *inam* villages of Wadwadgi (Taluka Muddebihal) and Areshanker (Taluka Bagewadi) and *chavrat* lands in other Government villages, forming part of the Deshmukh Samat Parvati Pargana Watan.

File I, pp. 1-67.

2. On 2nd October 1938 the plaintiff submitted a petition to the District Deputy Collector (Southern Division), Bijapur, praying for a restoration of the *inam* village of Wadwadgi and certain *chavrat* lands and for a direction for the payment to him of the cash allowance of Rs. 50. He also submitted another petition bearing the same date to the District Deputy Collector (Northern Division) in respect of the *inam* village of Areshankar and other *chavrat* lands.

File IA, pp. 1-67.

3. On 28th October 1939, the District Deputy Collector (Southern Division), decided the application pertaining to the village of Wadwadgi. He held, for reasons stated in his order that the plaintiff was not a *watandar* of the original Deshmukh family *watan* and consequently, the application was rejected. On 24th April 1941 the District Deputy Collector (Northern Division), passed a similar order regarding the village of Areshankar.

Do. p. 455.

4. On 1st April 1940, the plaintiff preferred an appeal to the Collector of Bijapur against the order regarding the village of Wadwadgi. That appeal was dismissed by the Collector by his order dated 6th February 1941. He also filed another appeal against the order in respect of the village of Areshanker which was rejected by the Collector by his order dated 30th October 1942.

File I, p. 403.

File IA, p. 461.

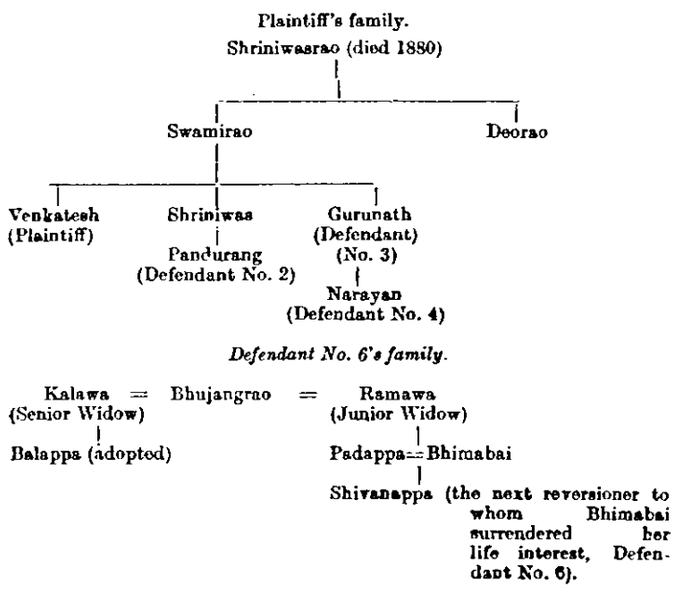
5. After making further petitions to the Commissioner, Southern Division and to Government* the plaintiff at length gave notice of suit on 7th June 1943 and on 16th March 1944, filed this suit in the Court of the Civil Judge, Senior Division, Bijapur.

*These are not found in the papers.

File V, p. 1-15.

Grounds of Defence.

1. The properties in this suit form part of the original Deshmukh Watan consisting of three entire villages of Wadwadgi, Areshanker and Kotikal and certain *chavrat* lands on Government villages. There has been protracted litigation in respect of these properties between the families of the plaintiff and the defendant No. 6 who are the principal contestants in this suit. As far as the record shows, this appears to be the first case in which Government has been made a party on account of its having passed certain orders. The following are the relevant pedigrees of the families of the plaintiff and defendant No. 6 :—



In order to understand the plaintiff's case, it is necessary here to state the history of the previous litigation between these two families.

2. The properties in the suit formed part of the *watan* lands formerly belonging to the *watandar* Bhujangrao Desai. He died on 27th September 1847 leaving two widows Kalawa and Ramawa. Kalawa was childless. On 15th September 1848, Ramawa gave birth to a son Padappa. The legitimacy of Padappa was at one time disputed but it was recognised in a previous litigation which went up to the High Court (I.L.R. 1 Bom. 248). Before Padappa's birth, the revenue authorities had placed the *watan* under sequestration, which continued until 1863 when Kalawa's title to the *watan* was recognised. She was put in actual possession some time in 1865 under the terms of the Gordon Settlement which were ratified by the Bombay Act III of 1874.

3. On 15th September 1865, Kalawa mortgaged with possession two villages of Wadwadgi and Areshanker to Shriniwas, the grandfather of the plaintiff who was the *watani gumasta*, for Rs. 9,900. Subsequently she created further charges in his favour. After a few years, Kalawa directed the village officers not to pay revenue to Shriniwas who thereupon filed a suit against her in 1870 for possession and revenues of the villages for 1869-70. The suit was decreed and in execution Shriniwas purchased the two villages and other *chavrat* lands. In 1873, he filed another suit to recover the revenues of the years 1870-71 and 1871-72 and got a decree. As a result of this litigation Shriniwas was put in possession of the two villages and he was in possession till Kalava's death in 1877. It is alleged by the plaintiff, that the properties in this suit were the properties alienated in his favour by Kalawa and of which he obtained possession through Court in 1875 (*vide* plaint paragraph 6).

4. After the death of Shriniwas in 1880, his son Swamirao (father of the plaintiff) applied to the Collector to transfer the two mortgaged villages to his name. The Collector rejected the application on 4th April 1881 and directed the village officers to pay the revenue to Padappa. That order was reversed by the Commissioner who directed that the revenues of the two villages should be paid to Swamirao until Padappa obtained a decree of the competent Court to the contrary. Thereupon, Padappa filed Suit No. 1007 of 1887 in the First Class Court at Sholapur which at that time had jurisdiction over the suit property. The trial Court decreed the suit in Padappa's favour but, in appeal, the High Court (Swamirao *v.* Padappa, I.L.R. 18 Bom. 22) reversed the decree and held that although Padappa as the rightful *watandar* was entitled to recover the land free from any mortgage executed by his predecessor, Kalawa was not the rightful incumbent of the *watan* and Padappa had lost, by lapse of time and Kalawa's adverse possession, his right to recover the lands as *watan* free from the mortgage incumbrances. This decision was reversed by the Privy Council in Padappa *v.* Swamirao I.L.R. 24 Bom. 556 and it was held that Kalawa's mortgage to Shriniwas was void against Padappa and had no force beyond her life.

5. After the Privy Council decision there was a constant succession of suits between Swamirao and Bhimabai the widow of Padappa relating to various survey numbers in which questions of occupancy rights and the like have been decided. In 1924, several suits were filed by Swamirao against Bhimabai and her husband's reversioner the defendant No. 6 and also by Bhimabai against Swamirao for establishing their respective rights over the villages of Wadwadgi and Areshanker, the lands situated therein and other *chavrat* lands. In these cases which went up to the High Court in Second Appeal No. 865 of 1929, it was held that in view of the Privy Council decision in Padappa *v.* Swamirao, I.L.R. 24 Bom. 556, which operates as *res judicata*, it was not open to Swamirao to say that the title to the *inam* villages still subsisted in him either on account of his status as *watandar* of the same *watan* or on the ground that his father Shriniwas had purchased in execution of his

File III, p. 35.

money decree the interest of Kalawa in the villages. A similar conclusion was reached in another series of litigation between the same parties which reached the (High Court in Second Appeal No. 223 of 1931).

File III, p. 67.

6. The present suit is the outcome of the agitation commenced by the plaintiff after his father Swamirao's death in 1932. The plaint is inordinately prolix clumsily drafted and makes very confused reading. Shorn of all irrelevant matter, however, the plaintiff's case seems to be based on the following contentions :—

(1) By virtue of the alienations made by Kalawa in his favour and the Court sales in execution of decrees obtained against her, Shriniwasrao had become the full owner of the *watan* properties in dispute.

(2) The Deshmukh Watandar family had made a grant of two lands of Hardolli to the plaintiff's family who were rendering *gumasta* service to the Deshmukh family. These *kadim* grants were settled under a Gordon Settlement Sanad No. 2404 of 1874 granted to Shriniwasrao. By virtue of these grants the plaintiff and his family had become the *watandar* of the same family as the Deshmukhs. The alienations of the *watan* property by Kalawa in favour of Shriniwas were, therefore, valid.

(3) The plaintiff claims the properties in the suit through his grandfather Shriniwas and not through his father Swamirao. The decision of the Privy Council in Suit No. 1007 of 1887 is not binding on him because (1) in that suit Swamirao and Deorao did not contend that they were *watandars* of the same *watan*, and (2) he was not a party to that suit.

In this suit Government is not concerned with the dispute as to the property rights between plaintiff and defendant No. 6. It is, however, interested in supporting the validity of the orders passed by Government officers.

7. Therefore, the principal question for determination is whether the alienations made by Kalawa in favour of Shriniwas and the latter's purchase of her interest in execution of the money decrees are valid and operative beyond Kalawa's lifetime on the alleged ground that plaintiff is *watandar* of the same *watan*. The Privy Council held in Padappa *v.* Swamirao that Kalawa who was a *de facto watandar* could not make any alienation of *watan* property which would be valid against her own heir Padappa. The effect of the decision of the Privy Council was considered by the High Court in Appeal No. 528 of 1908 wherein it is stated : "The effect of the Privy Council decision is, as I understand it, that Padappa was entitled to all the *inam* rights in the said villages and that the alienations by his predecessor-in-title, Kalawa, whether by way of gift or mortgage were only valid for the duration of her own life so that after the year 1877 when Kalawa died, the possession of the present plaintiff Swamirao must be taken to have been adverse to Padappa" (quoted in paragraph 12 of the Judgment of the District Court in Bijapur Appeal No. 22 of 1928, file III, p. 3). But the plaintiff contends that he is not bound by the Privy Council decision because in that litigation Swamirao failed to contend that he was a *watandar* of the same *watan*. This contention was, however, taken by Swamirao in another series of litigation between himself and Padappa's widow Bhimabai and defendant No. 6 which terminated in the High Court, with Second Appeals Nos. 865 of 1929 and 223 of 1931. In both these appeals it was held that the contention that Shriniwas was a *watandar* of the same *watan* ought to have been made as a ground of defence in Padappa's suit and that omission to do so debarred Swamirao from putting it forward in a subsequent litigation. In other words, this important issue was treated as *res judicata* under Explanation IV of section 11 of the Civil Procedure Code.

8. The question, therefore, is whether in this suit also the questions raised by the plaintiff ought to be regarded as *res judicata* in view of the result of the previous litigation. As between the plaintiff and the defendant No. 6 the matter

is undoubtedly *res judicata* but the only possible argument against that plea is that under section 11 of the Civil Procedure Code, the former suit must have been between the same parties or between parties under whom *they or any* of them claim. It might, therefore, be argued that these contentions are not barred in this suit because Government who is a party to this suit was not a party to the former suits. In reply it can be said that section 11 is not exhaustive of the circumstances in which an issue may be *res judicata* (*see* Mancharam *v.* Kalidas I.L.R. 19 Bom. 826 and Hook *v.* Administrator-General I.L.R. 48 Cal. 499). The rule of *res judicata* rests upon the principle that the decision of a Court of competent jurisdiction is, subject to appeal, final and *binding upon all parties thereto*. If it is wrong, it can only be set aside by the proper appellate authority and unless it is shown to have been obtained by fraud, it cannot be re-opened. In this suit the plaintiff and defendant No. 6 are those who were represented in the former litigation. The decision in the former suits being binding as between plaintiff and defendant No. 6 cannot now be re-opened. Government and the other defendants are not interested in the real dispute and therefore the mere fact that they were not parties to the former suits cannot affect the legal position.

9. Therefore, upon a true construction of section 11 of the Civil Procedure Code, the plaintiff's plea that he is a *watandar* of the same *watan* and consequently entitled to the property in the suit is barred as *res judicata*. A contrary construction of the section which would enable the plaintiff to re-open the previous decision of the Privy Council and the High Court is further open to the following objections:— (1) it would fail to give effect to the words "any of them" used in the section. The section does not in express terms require that *every one* of the parties to the later suit should have been a party or represented in the former suit; (2) it would be contrary to the general principle of law that a judgment given by a Court of competent jurisdiction is binding on the parties thereto. This is a fundamental principle of the legal system founded upon public policy and cannot be negatived except by the express words of a statute; (3) it would lead to considerable public inconvenience and mischief. A person against whom a decree is passed would then be in a position to circumvent section 11 and reagitate the matter by impleading in the second suit some person (not previously impleaded) who could with some show of reason be said to be a necessary or a proper party. It is, therefore, clear that if such a plea were permissible there would be no finality in the litigation which after all is the very object for the enactment of section 11. It must, therefore, be contended that is not open to the plaintiff to question the decisions of the Privy Council and the High Court referred to before and that the suit is barred on the general principles of *res judicata*.

10. Assuming that the contention is open to the plaintiff, it is not tenable even on merits. As observed before, it was taken by Swamirao in the case which went in Second Appeal before the High Court (Appeal No. 865 of 1929) and was negatived. The attention of the District Government Pleader is invited to paragraph 14 of the Judgment of the District Judge in Appeal No. 22 of 1928 which was confirmed in Second Appeal No. 865 of 1929. The contention is based on the *kadim* grant of certain lands made by the Deshmukh Watandars to the plaintiff's family in consideration of the *gumasta* service rendered by the latter to the former. The District Judge has shown that by reason of this grant prior to the introduction of the British Rule by the original *watandar*, the plaintiff does not become a *watandar* of the same *watan* so as to validate the alienation made in his favour prior to the Watan Act III of 1874. Reliance should also be placed on the case of Tarabai *v.* Murtacharya, 41 Bom.L.R. 925 wherein it has been held that a person who merely acquires *watan* property without acquiring the office and without being under obligation to perform the services attached to the office is not a *watandar* within the meaning of the watan Act of 1874.

File III, pp. 9-29.

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11. The contention that plaintiff claims through his grandfather Shriniwasrao and not through his father Swamirao is patently absurd and needs no comment. Obviously, this fantastic plea has been raised with a view to avoiding the bar of *res judicata*. It has no substance and deserves to be summarily rejected.

12. *Jurisdiction*.—In paragraph 43 of the plaint, the plaintiff has asked for twenty-one reliefs. That paragraph is very clumsy and cumbrous but omitting all that is unnecessary and overlapping, the reliefs sought against Government amount to this (1) declaration that plaintiff being a lineal descendant of Shriniwas who had acquired the *watan* property under Sanad No. 2404 is a *watandar* of the same *watan* ; (2) restoration of possession of the property to the plaintiff ; (3) a direction against Government to issue a certificate to the plaintiff under the Pensions' Act, 1871, in respect of cash allowance appertenant to the *watan* ; (4) an injunction restraining Government from paying the cash allowance in question to defendant No. 6 ; (5) direction to Government for entering the suit properties in the plaintiff's name in the revenue records. The relief regarding restoration of possession is clearly barred under section 4, clause (*a*) of the Bombay Revenue Jurisdiction Act. Paragraph 1 of clause (*a*) of that section bars the Court's jurisdiction to entertain a claim against the Crown relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act III of 1874 (*see* Khangowda *v.* Secretary of State 38 Bom.L.R. 1308 and Mallappa Tukko 39 Bom.L.R. 288). Similarly, the relief as regards entering the property in plaintiff's name in the revenue records would be barred under clause (*d*) of the same section. Also, under sections 4 and 6 of the Pensions' Act, 1871, the plaintiff is not entitled to any relief in respect of the cash allowance in the absence of

a certificate from the Collector. A prayer for an order to Government to grant such certificate under the Pensions' Act, 1871, is clearly misconceived.

13. The plaintiff has stated in clause 21 of paragraph 43 of the plaint that he is a pauper and has no property of his own except his wearing apparel. In the title of the plaint his occupation is described as "begging". The valuation of the suit for the purpose of court-fees, jurisdiction and pleader's fees is stated to be more than rupees two lakhs. The plaintiff appears to have applied for permission to sue in *forma pauperis*. In the event of the dismissal of the suit, it is hardly likely that Government will be able to recover any costs from him under Order XXX, rule 11, of the Civil Procedure Code. He has, therefore, no stakes to loose in this suit and evidently he has started this vexatious and speculative action in the hope of extorting something from the defendants.

14. For all these reasons, therefore, it should be urged that the suit fails and must be dismissed with costs.

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Translation.

Ex. 94. Special Civil Suit No. 48/1945.

Notice.

In the Court of First Class,Subjudge,Bijapur.

1. Venkatesh Swamirao Deshmukh..... Plff.

Vs.

1. The Bombay Province and 21 others Defts.

Herein the plaintiff informs defendant No.1 's pleader by notice as follows:- The details of the documents to be produced in this suit by getting them from the officers subordinate to defendant No.1 :-

I. From the village officers of Haradolli in Badami Tauka.

(1). Card giving vardi by plaintiff by post on 18-2-33.

(2). Card written by plaintiff on 1-4-33 to enter into Register of Disputes.

(3). Dakhala if any in the village granting relief to plaintiff's cards in respect of Hardolli village S.No.157/2 and 158.

II. From Badami taluka Record.

(4). Heirship proceedings of Swamirao Shriniwas who died on 9-12-32 and who was holding Haradolli village Deshmukhi Watan Inam Revision S.No.157/2 and 158.

III. From Muddebihal taluka Record.

(5). Proceedings stated by Padappa Bhujangappa Desai in the the year 1878 under section 10 of the Watan Act for cancellation of auction of Wadwadgi village and Budihal S.No.61. It was disposed of in the same year.

(6). Proceedings started by the said Padappa in the year 1906 for cancellation of auction of lands of Malgur,Kasinkuti and Budihal. It was disposed of by Government Resolution No. 3340 of 1919.

(7). Proceedings disposed of by commissioner on 7-5-1924 in respect of the disposal made by the Collector on 30-7-1923 in the matter of proceedings started by Bhimabai wife of Padappa under the Watan Act in respect of Wadwadgi S.No.41.

(8&9). Two proceedings W.L.R. 64 and W.L.R. 65 disposed of on

28-10-39 by Prant Officer Southern Division.

(10). Proceedings W.L.R.S.R.2 disposed of on 26-4-1941 by Prant Officer Northern Division.

(11,12 & 13) Proceedings W.T.P. 742 and W.T.P. 742-A disposed of by Collector on 6-2-1941 and W.T.P.879 disposed of on 30/31-10-1942.

(14). Proceedings bearing No. W.T.N.A.P. 1142-A disposed of on 16-1-43 by the Commissioner.

(15). Notice dated 19-9-42 given by plaintiff to defendant No. 1.

(16). Do of 7-6-1943.

(17). Supplementary Notice given to defendant No. 1 by plaintiff on 8-9-43.

(18). Plaintiff's statement revealing the mischief dated 3-1-44 sent by post to defendant No. 1.

(19). Government Resolution No. 2140 of 8-6-1864.

(20). Government Resolution No. 3340 of 2-4-1909.

Twenty proceedings in this way are by this notice communicated to be produced within 10 days of the receipt of this notice.

13-1-47. Sd/- V.S.Deshmukh.

Received on 20-2-1947.

Sd/- A.C.A.

D.G.P.

Ex 101 25-97

In the Court of Civil Judge, Senior Division, Bijapur.

Special Civil Suit No.48 of 1945.

1. Venkatesh .... Plff.

Vs.

1. The Province of Bombay and others. .. Defts.

Herein the pleader for deft No 1 submits the following pursis about the notice of the plff dated 13-1-1947 copy of which was .. received by me on 20-2-1947:-

1. Serial Nos. 16,17, and 18 under the head III in the notice are already produced in court along with some other papers on 16-12-1946.

2. As regards serial No. 8 and 9 W.L.R. 64, and serial No. 10 W.L.R.S.R.2, and serial No. 11 and 12 W.R.P. 742, serial No. 13 W.T.P. 879 the D.G.P. has got with him files bearing Nos. I,I(A),II,II(A),III and IV. The plff is not entitled to their production. They are however brought to Court and the D.G.P. submits to Court that plff is not entitled to their

production. He may obtain certified copies in respect of such of them in respect of which certified copies can be obtained.

3. As regards serial No.15, File II(A) contains pages 61-63 being the request of the plaintiff dated 19-9-42.

4. As regards the rest of the papers the D.G.P. submits that he has written a letter to the Collector and in case of such of them as may be traced and sent to D.G.P. the D.G.P. will submit his say after the receipt of a reply from the ~~Collector~~ Collector.

6-3-1948. sd District Government Pleader, Bijapur.

"True Copy"

District Government Pleader, Bijapur

Translation.

Special Civil Suit No. 48/1945.

Pauper.

In the Court of 1st Class Civil Judge, Bijapur.

1. Venkatesh Swamirao ... Plff.

Vs.

1. The Bombay Province and 21 others... Defts.

Herein the plaintiff by his application requests as under:-

(1). Defendant No. 1 has not produced any documents on his behalf.

(2). Documents produced by defendant No. 1 are produced as per demand of defendant No. 6. But the plaintiff came to know on 6-3-1947 after discussion before court that they had been produced before plaintiff's notice was served on defendant No. 1. The court made an oral order on that day; hence the necessity of making this application.

(3). There are three proceedings No. W.D.R.64 and W.L.R. 65 of the Prant Officer Southern Division and No. W.L.R.S.R. 2 of the Prant Officer Northern Division about the suit property. Appeal No. W.T.P. 742 about the first, and original courts orders of the third are produced. By this it does not mean that the three proceedings and orders of appellate court in respect of the suit property are produced. Within 3 days of the demand made by defen--dant No. 6 the documents called for by him are produced(by deft No. 1) without objection. But

(4). To object to plaintiff's requisition that copies should be taken etc. would make it clear the defendant's conduct is not straightforward.

(5). Dakhalas to show that copies applied for were not duly supplied (that is some copies are not given by putting forth false excuses and in respect of some copies supplied are different from thos applied for) are at S.No. 75 to 78 in papers produced on 13-1-47. Rest will be produced later on.

(6). Just as defendant No. 6 was got given some documents from defendant No. 1, similarly the following papers should be got given to the plaintiff by getting them.

(7). The particulars of the papers:-

(1). Card giving wardi to village officer of Hara

on 18-2-1933 in respect of suit lands.

(2). Card written by plaintiff to the said village officer on 1-4-1933 to enter into Register of Disputes.

(3). Notice sent by post by plaintiff to defendant No. 1 on 19-9-1942.

(4). Government Resolution No. 2140 of 8-6-1864.

(5). Government Resolution No. 3340 of 2-4-1909 in the matter of proceedings started by Padappa Desai in the year 1906 about cancellation of auction of lands in Malgur, Kasinkunti and Budihal.

(6& 7) Proceedings Nos. W.L.R. 64 and W.L.R.65 were disposed of by Prant Officer Southern Division on 28-10-39 concerning suit property. Two notes prepared by Karkun's about their disposal.

(8). Copy of order of W.L.R. 65.

(9). Order remanding in appeal No. W.T.P.742 in respect of the said two numbers.

(10& 11) The said appeal was ~~resubmitted~~ remanded to the appellate court by by two reports. One was sent undated and was received by the appellate court on 16-9-1940, the second report is dated 7-12-1940. Both these reports.

(12& 13) Notes prepared by the clerks for disposal of Nos. W.T.P.No.742 and W.T.P.742-A.

(14). Copy of order of appeal No. W.T.P. 742 -A of 6-2-1941.

(15). Notice to Gurunath Swamirao and Pandurang Shriniwa to state their say in appeal No. W.T.P. 742 along with their endorse--ment acknowledging the receipt of the notices.

(16). Copy of statement given in writing by Pandurang and Gurunath in appeal No. W.T.P.742.

(17). Copy of Jamedar Chitta relating to Nidgundi Pargana Watan from Bagewadi Taluka Office.

(18). Copy of Taluka Form No.IV of 1945-46 from Bagewadi Taluka relating to Nidgundi Pargana Deshmukhi Watan.

Thus 18 pepers should be got produced.

). On account of enemity against the plaintiff Mr.Shetti erk of Prant Officer Southern Division has played mischief with view to cause loss to plaintiff. And as the contention of the aintiff is that by colluding with Mr.Katti clerk in Collector's fice and without informing the real facts to the signing authority

order confirming lower court's order is got given production of W.L.R.64 and W.L.R.65 of the Prant Officer Southern Division and appeal No. W.T.P. 742 and 742-A thereon would be necessary to see as to who have written the report and the notes for disposal, on what authority number has been given to appeal and who has done so and who have written the orders.

(9). Proceedings of the Commissioner disposed of on 7-5-24 in the matter of proceedings started by Bhimabai against plaintiff's father Swamirao for restoration of Wadwadigi S.No. 41 under the Watan Act.

(10). Padappa Desai had started proceedings against plaintiff's father in 1906 for cancellation of auction of lands of Malgur Kasinkunti and Budihal. This was disposed of by Government Resolution No. 3340 of 2-4-1909. Both these proceedings are called for to see papers produced by plaintiff's father therein and to see which out of them are useful for the present suit.

(11). The plaintiff has callef for proceedings of cancellation of auction of 1878 in order to enable the plaintiff to use 4 documents produced by plaintiff's grand father Shriniwas before the subjudge in the matter of cancellation of auction of Wadwadgi village and Budihal S.No. 41.

Thus in all the aforesaid 18 papers and 7 proceedings which are with defendant No. 1 be called for and the suit further proceeded with.

12-3-47. Sd/- V.S.Deshmukh.

Applicant Venkatesh Swamirao Deshmukh caste Brahmin, age 68, occupation begging, residing at Malgur in Muddebihal taluka now at Bijapur hereby solemnly affirm that what is stated in the application above is true according to my knowledge .

Date Ditto. Sd/- V.S.Deshmukh.

I know the deponent.

Sd/-

Solemnly affirmed before me by Venkatesh Swamirao Deshumkh of Bijapur who is identified by R.V.Kulkarni whom I personally know.

Dated 12-3-1947. Sd/-

Clerk of the court.

Applicant to file an affidavit that certified copies cannot be had.

For say of defendant.

12-3-1947. Sd/-N.V.Ransubhe.

Ex 104 15

In the Court of Civil Judge, Senior Division, Bijapur.

Special Civil Suit No.46/~~1947~~ 1945.

1. Venkatesh Swamirao -- Plff.

Vs.

1. The Province of Bombay and others -- Defts.

Herein the District Government Pleader submits as follows in respect of Plff's application dated 12-3-1947 :-

1. As stated in the pursis dated 6-3-1947 submitted in respect of the notice of the Plff dated 13-1-1947 (copy of which was served on me on 20-2-1947) the District Government Pleader is in possession of Files as stated by him in Para 2 of his pursis dated 6-3-1947. The District Government Pleader has by that pursis given a full reply in respect of the papers called for by the Plff by his notice dated 13-1-1947. Plff's allegations in his application dated 12-3-1947 are not correct and his allegations against party and members of the staff are unfounded.

2. The Plff has in Para 7 of his application referred vaguely to a number of papers. Except serial Nos.17 and 18, all and those that he has mentioned in Para 8 and 10 and all were referred to by him in his notice in respect of which the D.G.P. has put in a

pursis dated 6-3-1947. As regards serial Nos.17 and 18 in Para 7 of his application the Plff may apply for copies to proper authorities and if Plff has applied and not got them he may produce the replies so that the D.G.P. may then take instructions in respect of those papers and submit his say.

3. As stated in the pursis dated 6-3-1947, the District Government Pleader has brought to Court the Files referred to in Para 2 of his pursis dated 6-3-1947 and submits that the Plff is not entitled to production of any of these papers. The District Government Pleader may be permitted to submit his further say after the receipt of reply from the Collector as submitted by him in Para 4 of his pursis dated 6-3-1947.

Sd.
District Government Pleader,
Bijapur.

"True Copy"
Sd/-
District Government Pleader
Bijapur

1x-2 33 101

This is an application by plaintiff to ask the ... defendant to produce the documents mentioned in the application.

The defendant has filed his say at Exs. 101 and 104.

For reference I take serial Nos. of the documents .. mentioned in the notice Ex. 94 of plaintiff.

The defendant has produced serial Nos. 16, 17, 18 & have with him ready documents serials Nos. 8, 9. 10, 11-12 & 13 vide Ex. 101. As regards the rest documents a search is being made by Government and the learned pleader has agreed to give his say. But under O. 11 r. 14 I ask the Government to produce the rest ..... documents in court for inspection.

The plaintiff is asked to inspect all documents ..... produced in court and then to apply for certified copies of them through this court as the originals being bulky can't be disturbed from Government custody and kept in this court.

The G.Rs. will be kept here on record which he desires to have. The inspection should be in Court.

2-4-1947. Sd/-

"True Copy"

Advocate

District-Govt. Pleader

Signature

Exhibit No. 115.

Special Civil Suit No. 48 of 1945.

Pauper.

In the Court of 1st Class Sub Judge, Bijapur.

1. Venkatesh Swamirao Deshmukh. Plff.

Vs.

1. The Bombay Province and 20 others... Defts.

Herein the plaintiff begs to place before the court the nature of the mischief played by the servants of Deft. No.1 upon the plaintiff as well as upon the court:-

1. In the first instance Mr. Katti, clerk to the Collector played mischief by splitting into three parts the claim submitted on 3-9-1937 by the plaintiff.

2. As a result, of the mischief played by Mr. Khetti clerk to the Prant Officer, S.D., and an enemy of the plaintiff, two out of the three parts referred to above lost their companionship and the entirety of the Heriditar; Deshmukh Office was destroyed.

3. These orders were upheld by all the higher authori--ties, and the third part was also dealt with similarly by the Prant Officer, N.D.

4. When the third part was in appeal, the plaintiff brought the mishhief played by the staff to the knowledge of Deft No. 1 by a notice dated 19-9-1942 and requested the Collector to grant a regular hearing in the appeal pending before him.

5. The Collector without considering the grounds for the request passed an order that " as the claims set up by the appellant are such as to be properly decided by the Civil Court".

6. This kind of order though in accordance with the principles of the Land Revenue Code contravenes those of the Watan Act. All these orders being summary ones are against the directions of Section 56 and section 73 of the Watan Act.

7. The Legal Remembrancer, without considering the notice dated 19-9-1942, and 7-6-1943, supplementary notice

and statement revealing the mischief perpetrated by the Staff and directions of section 80 of C.P.C. allowed this suit to be filed, and is struggling on wrong lines to fight out the case.

8. Look for instance, at para 5 of the written statement which is as under:-

" The allegations of the plaintiff in para 2 of the plai that the family of the plaintiff is the Watanic Gumaste Family of the said Deshmukh Watan, that the Hereditary rights of the family of the plaintiff in the Watan was created in 1658, and that the Gordon Settlement Committee bestowed Deshmukhship on the plaintiff's Family are denied.

Thus, he frankly goes against the records viz. G.R.No. 2140 of 1864 and Sanad No.2404 issued to Srinivasrao,Grand-Father of the Plaintiff.

Secondly,--- he admits the plaint regarding the status of the plaintiff under the wordings in para 6 as follows:-

" Neither the plaintiff nor his ancestors were Watandars of the same watan as that of Deft. No. 6 or his ancestors as cont--ended by the plaintiff is para 3 in other paras of the plaintx".

But, the coined term Viz. "Watandar of the same Family as Deshmukhs" by the above named Mr. Shetti has been used by the Legal Remembrancer in para 10 of the Written-statement in place of the legal term" Watandar of the same Watan".

And instead of wording indicating bar of the Watan Act, the Bar of Res Judicata has been used in the very 10th para with is

" It is therefore submitted that the plaintiff's conte--ntions that on account of Grant of 2 lands to plaintiff's family who were rendering Gumaste Service, the plaintiff and his ancestors had become watandars of the same Family as Deshmukhs, and that by virtue of alienations made by Kalawa and the Court Sales in executi of Decrees obtained against her, Srinivasa had become full owner of the Watan Properties in dispute even as against Padappa and even beyond the life time of Kalawa are not correct, on the genral principle of Res Judicata. " These wordings constitue mis interpr--etation of the above Legal Terms while " Watandar of the same family" gives no meaning.

And this bar of Res Judicata is favourable to the Plff. as the alienations are valid because it is established that Plff 's family is the Watan Family entitled to hold portions of this Watan..

9. This is the opinion offered by the Legal Remembrancer.

10. On the strength of this opinion, the District Government Pleader has been giving irrelevent answers to the queries of the plaintiff and is trying to mislead the Court. He first refused to produce the papers asked for by the Plff. those that he produced later on are not in order and some important papers " papers regarding Lads under Sanad No. 2404" have not been produced at all. In order to conceal the mischief, underlying this grudging response to plaintiff's call for papers, the list gives only the beginning and ending papers in each file and it is difficult to trace a particular paper in a particular file. To ascertain the existance or non-existance of a particular document one has to go through all the six files peculiarly numbered.

In place of the notice issued on 19-9-1942, he has produced a request of the same date saying that the request itself is a notice asked for, while in the request there are clear words referring to the notice " The accompanying notice". This kind of behaviour is bound to mislead the court.

11. Papers deliberately held back are described in the list as minus pages. This kind of behaviour amounts to comtempt of the Court.

12. The District Government Pleader, who by reason, of his high status and proficiency in law and legal procedure should be the last person to stoop to such mischief, has not scrupled to do do.

13. The plaintiff prays that the court will particularly record observations of the wrongs inflicted on the plfft. by Government.servants acting in their official capacity as well as wrongs perpetrated deliberately.

Sd/- V.S.Deshmukh.
Plaintiff.

Copy is submitted to
1. The Hon.Revenue Minister,
Govt. of Bombay for information.

Bijapur.
Date:- 5th June 1947.

ఈ అర్జీ ముఖ్యంగా ఎవరిమీద చర్యలు జరగాలని కోరుతూ వచ్చిందో వారిమీద కాకుండా ఎవరిమీదనో చర్యలు తీసుకోవడానికి ఈ అర్జీ పెట్టినట్లుగా వారిమీద చర్యలు తీసుకోవాలి ఈ అర్జీ ఎందుకు పెట్టారో ఆ వ్యక్తులు ఎవరో ..

Sd/- V.S. Deshmukh,

(Translation :- This application is not meant to proceed against the persons mentioned in this application. This application is meant to stop fraud. Date same.

: Sd/ V. S. Deshmukh)

125 1/39

In the Court of the Civil Judge, Senior Division, Bijapur.

Special Civil Suit No.48/1945.

1. Venkatesh Swamirao.... Plff.

Vs.

1. The Province of Bombay and others ..Defts.

Herein the District Government Pleader for deft No.1 submits as follows in respect of plaintiff's application dated 5-6-1947 in respect of which he has stated that his application is not meant to proceed against the persons mentioned therein:-

1. The allegations and insinuations made against the Government Officers in the said application are not true.

The contentions of the plaintiff set forth in his application are not correct.

2. Notice on behalf of one of the defts was served on the District Government Pleader for production of some papers. They were produced accordingly.

3. The plaintiff wanted production of papers and several proceedings as per his notice Ex.101 his say to the court in this respect. He also submitted by Ex.104 his say to the court in respect of plaintiff's application of 12-3-1947. The court ordered the defendant to produce (the rest of) the documents in court for inspection.

Ex94. The District Government pleader submitted by

The plaintiff as stated above wanted inter alia several proceedings to be produced. The District Government Pleader had with him some files, and some papers out of these had already been produced in court as stated in para 2 above. The District Government Pleader thus produced the Files mentioning the pages therein. The Collector of Bijapur on being moved by the District Government Pleader called for papers from his subordinates and sent to me papers that could be traced and they have been produced in court. The allegations against the District Government Pleader are not true.

9-6-1947.

District Government Pleader,
Bijapur.

1947 B
41

DAIPTY. No:_____
1947.

In the Court of the District Judge,
Bijapur.

---

1. Venkatesh Swamirao Deshmuth ... applicant.
orgl. plff.

Vs.

1. The Province of Bomba and 21 Others. opponents
orgl. defts.

Herein the plff-applicant humbly begs to get his special suit No. 48/1945 transferred from the Court of the First Class Sub Judge(Civil Judge,Senior Division) Bijapur to any other competent Court for the following among other grounds:-

1. The very framing of issues indicates that the court sides with deft No. 1, these being in the form and style suggested by the pleader for deft No.1 disregarding those suggested by the plff.

2. Where there is a question of fraud the starting issues ought to be about the reality of facts while the very starting six issues are calculated to support the alled fraud. and the order of issues should follow the order of facts in the history of the case as given in the plaint.

3. The issue on fraud stands last but one i.e. Nos. 21. The reference therein to paras 12,21 and43 of the plaint show that it relates only to two sets of defts. viz, deft No. 1 and deft No.6 (7,8and.9) the Bhaubands by property, while the third set namely Bhaubands by blood remains untouched. and the perpetration of fraud by theservants of deft No. 1 is of two kinds-- one bona fide and the other male fide. Bona fide fraud is in issuing certificate under section 10 of the water Act against Shriniwas Plff's grand-father while male-fide fraud is against plff in his efforts in getting the said fraud set right. The nature of the latter kind of fraud has been made clear in para 40 of the plaint and no issues have been framed on this, nor on the fraud perpe-rated by Bhaubands byblood, though the plff suggested for framing of such issues.

4. The wording of this issue i.e. No.21 clearly shows the tendency of the Court to mislead the plff and there as all be

xhibits to prove this tendency on the part of the Court.

Nos. 7 and 8 being the main issues regarding reality f facts, are abrupt and purposeless. Hence it is impossible or this et of issues to enable the Court to do justice ithout additional issues.

The burden of proving issues Nos. 14,15 and 16 has been illegally thrown on plff. This is mis-leading the plff.

Issue No. 13 is no issue,. It has lost its nature as ssue by reason of the wording" under the watan Act" at the nd. On the other hand this issue binds the Court of support he illegal acts of the servants of deft No. 1 viz.

I. directimng the plff to submit three application in respect of one and the same claim;

II. Deshmukh watan and Deshmukh Gumasth watan are independen watans and the Holders i.e. deft No. 6 and plff of these portions are not watandars of the same watan;

III. Plff's claim in respect of mardolli lands has been rejected under clause 3 or section 35 of the watan Act, not-w-ith standing that the claim awas (a) within time (b) derived from the predeceased representative watandar and (c) in respect of entries not enquired into (Vide section 4 and 26).

Thus issue No. 1 to 6 and 14,15 and 21 are not proper ssues. No. 13 is no issu at all. No. 16 has been framed on the llegation of wrong deft. Nos. 7 and 8 the main issues are brupt and purposeless. No issue have been framed on the inconsistent contentions or pleading in the respective written statement of the lefts. The burden of proof has not at all been thrown on defts hough the allegations in thier respevtive written statement equire to be proved. In reply to plff's request for getting such contentions pro ed either by deft No.1 or by the Court, orders nav been passe xxxxixxx to the effect that the plf should summon right of cross examination. All these acts of the court are ive to the securing of justice.

regard to plff's efforts to get deft No. 1 to produce ary documemtns the orders against the plff are in the e used by the D.G.P.

other

10. Due to the Court's concesssion to Deft No.1 all the documents required from him, have not been produced, though the proper time of production accrued on 12-12-1946.

11. In order to put the plff in an awkward position the court refused to issue summons to the Record Keeper of the Dist: Court for the production of certain documents.

12. Such is the state of things as regards making the case ready for hearing.

13. With the intention of dismissing the suit, the request for appointment of a receiver has been rejected on the ground that plff has not proved his ownership, so that no plea might be left to plff for restoration.

14. In this state of affairs, the court fixed 8-8-1947, for hearing, and adjourned to 19-8-1947 for preliminary hearing thinking that plff would not raise any objection to such hearing thus the object of the court is not to do justice to the plff.

15. Though the fact that plff's family is the plaint water family has been established in 1964, this fact has been given a bogus appearance by the fraud which was perpetrated through a loop hole in section 10 of the water Act in 1978 and has been in force uptodate. and it being the duty of the servants of defts No. 1 to rectify the fraud, they neglected to do this . Still the Court persists in not treating Deft No.1 as a party.

15. In these circumstance, the plff prays that the case may be transferred from the 1st class Sub Judge's court to any other competent court for disposal i.e., for framing of proper issues and making the case ready for hearing.

16. In the present suit the plff has been held to be a pauper, and he begs that he may be treated as such in future proceedings too.

17. The plff begs that the court may, in view of his being a pauper, order the transfer of the case on its own motion as permitted by section 24 Civil Procedure Code and as a matter of grace to the pauper plaintiff.

That the plff has been held to be a pauper will be

seen from the accompanying certified copy of his application to the 1st Class Court for time to have the case transferred from that Court.

" "

Bijapur

6th October 1947. Applicant.

I, Venkatesh Swamirao Shmukh, above named applicant, solemnly affirm that what is stated above in paras 1 to 17 is true to my information, knowledge and belief.

Bijapur.

6th October 1947. Applicant.

+99 3
41

RAMPT. No:_____
1947.

In the Court of the District Judge,
Bijapur.

---

1. Venkatesh Shamirao Desmmuth ... applicant.
orgl. plff.

Vs.

1. The Province of Bombe and 21 others. opponents
orgl. defts.

Herein the plff-applicant humbly begs to get his special suit No. 48/1945 transferred from the Court of the First Class Sub Judge(Civil Judge,Senior Division) Bijapur to any other competent Court for the following among other grounds:-

1. The very framing of issues indicates that the court sides with deft No. 1, these being in the form and style suggested by the pleader for deft No.1 disregarding those suggested by the plff.

2. Where there is a question of fraud the starting issues ought to be about the reality of facts while the very starting six issues are calculated to support the pilea fraud. And the order of issues should follow the order of facts in the history of the case as given in the plaint.

3. The issue on fraud stands last but one i.e. Nos. 21. The reference therein to paras 12,21 and43 of the plaint show that it relates only to two sets of defts. viz, deft No. 1 and deft No.6 (7,8and.9) the Bhaubands by property, while the third set namely Bhaubands by blood remains untouched. And the perpetration of fraud by theservants of deft No. 1 is of two kinds-- one bona fide and the other male fide. Bona fide fraud is in issuing certificate under section 10 of the water Act against Shriniwas Plff's grand-father while male-fide fraud is against plff in his efforts in getting the said fraud set right. The nature of the latter kind of fraud has been made clear in para 40 of the plaint and no issues have been framed on this, nor on the fraud perpet-rated by Bhaubands byblood, though the plff suggested for the framing of such issues.

4. The wording of this issue i.e. No.21 clearly shows the tendency of the Court to mislead the plff and there are other

exhibits to prove this tendency on the part or the Court.

5. Nos. 7 and 8 being the main issues regarding reality of facts, are abrupt and purposeless. Hence it is impossible for this et of issues to enable the Court to do justice without additional issues.

6. The burden of proving issues Nos. 14,15 and 16 has been illegally thrown on plff. This is mis-leading the plff.

7. Issue No. 13 is no issue,. It has lost its nature as issue by reason of the wording" under the watan Act" at the end. On the other hand this issue binds the Court of support the illegal acts of the servants of deft No. 1 viz.

I. directing the plff to submit three application in respect of one and the same claim;

II. Deshmukh watan and Deshmukh Gumasth watan are independent watans and the Holders i.e. deft No. 6 and plff of these portions are not watandars of the same watan;

III. Plff's claim in respect or mardolli lands has been rejected under clause 3 or section 35 of the watan Act, not-w-ith standing that the claim was (a) within time (b) derived from the predeceased representative watandar and (c) in espect or entries not enquired into (Vide section 4 and 26).

8. Thus issue No. 1 to 6 and 14,15 and 21 are not proper issues. No. 13 is no issu at all. No. 16 has been framed on the allegation of wrong deft. Nos. 7 and 8 ~~xxx~~ the main issues are abrupt and purposeless. No issue have been framed on the inconsistent contentions or pleading in the respective written statement of the defts. The burden of proof has not at all been thrown on defts though the allegations in thier respevtive written st tement require to be proved. In reply to plff's request for getting such contentions pro ed either by deft No.1 or by the Court, orders have been passe ~~xxxxxxx~~ to the effect that the plf should summon the right of cross examination. All these acts of the court are not conducive to the securing or justice.

9. In regard to plff's efforts to get deft the necessary documentns the orders against the pl very terms used by the D.G.P.

45 | 49

Below Ex. 1 in Misc. Application

No. 81 of 1947.

Order.

This is an application made by the plaintiff under section 24 of the Civil Procedure Code for the transfer of Special Suit No. 48 of 1945 from the Court of the Civil Judge, Senior Division, Bijapur to any other competent court.

2. The facts leading to the present application are briefly as follows: The plaintiff has filed the said suit for possession of the suit property against 21 defendants alleging it to be the watan property under the provisions of the Watan Act. The defendant No.1 is the Province of, Bombay.

3. The defendants resisted the plaintiff's claim on various grounds. The parties suggested several issues and the Civil Judge, Senior Division, framed 22 issues to cover the contentions of the parties on January 17, 1947 (vide Ex.95). Subsequently, the plaintiff filed the application Ex.98 dated February 6, 1947 for amendment of the issues stating that the issues already framed were not exhaustive. The Civil Judge, Senior Division, recast the issues Nos. 8 and 16 as suggested by the plaintiff and rejected the other suggested issues holding them to be irrelevant.

4. Thereupon, issues Nos. 1 to 6, 9 13 and 16 were set down for hearing as preliminary issues.

5. In the meanwhile, the plaintiff has filed this application on October 6, 1947 for transfer of the said suit on the grounds that the proper issues have not been framed in the case, that the lower court did not allow him facilities for the producedon of documents, that his prayer for the appointment of a Receiver was rejected and that the prodedure followed by the lower court in setting down the case for hearing on preliminary issues was erroneous.

6. The application for transfer is opposed on behalf of defendant No. 1. All the allegations made in the application are denied by the written statement Ex.13. It is alleged that the trial court has framed correct issues, that it has given all facilities for the plaintiff to produce documents, that the plaintiff's prayer for the appointment of a Recivever was not rejected with the intention of dismissing his suit and that the Court's object was not to do injustice to him.

7. The plaintiff is held to be a pauper and he is not represented by any pleader. Hence he personally submitted his arguments in support of his application. The Learned District Government Pleader argued on behalf of defendant No.1.

8. Now, under section 24 of the Civil Procedure Code, the onus lies on the applicant to make out a strong case for a transfer of the case from one Court to another. No doubt, the apprehension on the part of the applicat that he will not get a fair and impartial trial of the suit in theCourt in which it is pending will have to be taken into consideration in an application for the transfer of suit, but that appre-hension must be reasonable. This view is covered by a ruling, vide the case of Khwaja Ahad Shah. Vs. Musammat Ayshan Begum (77 I.C.762).Therein it is held: " In dealing with an application for the transfer of a suit it is the apprehension on the part of the applicant that he will not get a fair and impartial trial of the suit in the Court in which it is pending that should receive consideration, but the apprehension must be such as a reasonable man might reasonably be expected to entertain". Applying this test to the facts of the present case, I find that the apprehension of the applicant to the effect that he will not get a fair and impartial trial in the Court of the Civil Judge(S.D.)is not reasonable inasmuch as the grounds alleged by him for the transfer of the application do not go to prove that the trail judge is in any way prejudiced against the applicant.

9. Now, we shall proceed to examine the grounds of the transfer alleged by the applicant to ascertain whether they are sufficient for a transfer of the case. It is true that the applicant had suggested 35 issues, but the lower court with the help of the pleaders for the defendants has framed 22 issues to cover the main contentions of the parties (Vide the issue paper Ex.95).Subsequently, it recast two issueds on the application of the ~~parties~~ plaintiff (vide Ex.98).Issues No. 21 covers the contention of the plaintiff on the point of fraud. Now, this Court is not competent to sit in judgment against the order passed by the Civil Judge (S.D.) in special suits and that being so, we cannot go into the question whether the issues framed by the lower court are correct or otherwise. If the issues are not correct as suggested by the applicant, it is open to him to get them corrected in appeal. That being so, there is no substance in the first ground raised by the applicant.

10. Then, it was contended that the lower court did not allow facilities to the plainti f to produce the documents but it allowed all facilities to the defendants to produce documents. In my opinion, there is no substance in this contention also. Exs. 93,102,and 103 are the applictions
[illegible]ed on by the applicant in support of this ground. The
[illegible]iff requested the court by his applic.tion Ex.93
[illegible]January 13,1947 to issue an order to the pleader for
[illegible]ant No.1 to produce certain documents within 10 days
[illegible]he date of the notice issued to him. The lower court

ordered on this applic tion to produce the reply denying him the certified copies. In my opinion, the order was quite pro er under Order XIII rule 10 of the C.P.Code. The defen--dant No.1 is the Government and the plaintiff wanted certain documents from the custody of the offices under the Govern--ment. Now, a party who wants to send for documents from the records of the Government officers, must first produce certified copies. If he cannot get certified copies, then only he is entitled to call for originals. Similar remarks are applicable to the application Exs. 102 and 103. The plain--tiff filed the applic tion Ex.102 dated March 12,1947, to s send for certain papers from the defendant No.1. On March 17, 1947 he made another application Ex.103 complaining that ther order passed by the lower court on the applic tion Ex.102 was inconsistent with its first order passed Ex.93. The defendant No. 1 gave replies (Vide Exs. 101 and 104).Certain documents were produced on b half of defendant No. 1 and the lower cour ordered him (the plff) to proddce certified copies of certain other documents, as the originals, being bulky, could not be disturbed from Governmmnt custody. To me it a pears that the order passed by the lower court is pro er and le al. Thus, there is no substance in the second ground also.

11. Then, it was contended by the applicant that the lower court rejected his application for the appointment of a Receiver and hence he apprehended that he would not get a fair and impartial trial at the hands of the trial court. On the other hand, the District Government Pleader urged that the applic tion was properly rejected by the lower court, that the order was appealable and that if the plaintiff was aggrieved by the said order, he had a remedy by way of appeal Ex.28 is an applic tion filed by the applicant on April 4,194 for the appointment of a receiver. This application was strenuously opposed on behalf of defendants. On hearing, the lower court rejected the applicant's prayer on two grounds. Firstly, it was of opinion that at that stage the plaintiff had not proved his prima facie title to the suit property. Secoddly, it was of opinion that he has not proved that there was a danger or waste to the immoveable property r-sulting in irreparable loss. For these reasons, the lower court was of opinion that it was not just and convenient to appoint a Receiver. Now, if the plaintiff was aggrieved by this order, it was open to him to prefer an appeal against th said order under Order 43 rule 1 of Civil Procedure Code.

12. Lastly, it was argued by the applicant that the lower court had fixed the case forhearing on preliminary issues with intent to do injustice to him. In my opinion, there is no substance in this contention also. Out of the issues framed by the lower court, there are several issues on points of law. It is competent for a Court to choose

certain issues out of all the issues framed in the case and treat them as preliminary issues. Thus, the lower court has treated issues Nos. 1 to 6, 9, 13 and 16 which are all on law points as preliminary issues and fixed the case for hearing on those issues. That being so, it was perfectly justified in the procedure adopted by it.

13. For the reasons stated above, to me it appears that the grounds for transfer alleged by the applicant are not proved; that even if they are held to have been proved; they are not sufficient grounds for a transfer of the case inasmuch as the orders passed by the lower court are judicial orders and that the apprehension on the party of the applicant is not reasonable.

14. For these reasons, the application is rejected with costs.

January 18,1948.

Sd. P.H.Gunjal
District Judge.

Bill of Costs.

Applicant.	Rs. as. P.	Opponent No. 1.	Rs. as. p.
1. Stamp for application Ex.1.	0-4-10 - 0.	1. Pleader's fees.	30-0-0.
2. --Do..Exs. 9 and 11.	1 - 4 - 0.		
3. Process fee	10 - 0 - 0.		
4. Pleader's fee	0 - 0- 0.		
Total:-	11 - 14- 0.		Rs. 30-0-0.

Ourt of Rs. 11-14-0(Rs eleven and fourteen annas only), the applicant should pay to Government Rs.1-14-0 on account of court fee.

Dated this 12th day of January 1948.

Sd. D.N.Nadkarni-
clerk of the court.

Sd. P.H.Gunjal
District Judge.

"True Copy"

District Govt Pleader
Bijapur

S. Bij. 214
18

Received on:-19-4-45. Decided on:-28-7-48.
Registered on:-19-4-45. Duration:-3 years,3 months & 9 da

In the Court of the Civil Judge(Sr.Dn).

At Bijapur. Ex.

Sp.civil suit no.48 of 1945.

Pleaders.

. In person.

1.Venkatesh Swamirao Deshmukh of Samat Nidgundi, Parvati and Paragana Nidgundi, Brahmin, age 65,occupation Bagging,residing at Yalgur,taluka Muddebihal,district Bijapur.) Plaintiff.

against

Mr.K.R.Rao Dep.Pr. dfn.1.

1.The Province of Bombay.

Mr.N.V.Jorapur for deft 2 and 15.

2.Pandurang Shriniwas Parvati,Brahmin,27, agriculture,of Nidgundi,taluka Bagewadi.

~~Mr.K.R.Rao for defts 3,4 and 5.~~

3.Gurunath Swamirao Parvati,Brahmin,50, agriculture,of Do. ... ...

4.Narayan Gurunath,minor by guardian father Gurunath (defendant no.3),age 10,student of Do.

5.Venkatrao Parvatrao Parvati,Brahmana,60, pleader,of Do. ... ...

Mr.N.P.Desai and Mr.A.M.Desai for defts 6,7,8,10,11, 12,13,14 and 21.

6.Shivanappa Yelgurdappa Desai,Chatriya,Hindu, 45,landlord,of Wadwadgi,taluka Muddebihal.

7,Chandramappa Yelgurdappa Desai,48,agriculture, caste and residence Do. ... ...

8.Chanbasgappa Balappa Desai,28,rest Do. ...

Mr.G.V.Hiremath for deft 9.

9.Bhujangappa Appasaheb Desai,38,agriculture, and officiating Patil,rest Do. ... ...

10. Yelgurdappa Krappa Nisbat Desai,30,Hindu,rest Do.
11. Ramchandrappa Krappa Nisbat Desai,27,rest Do.
12. Krabasappa Krappa Nisbat Desai,24,rest Do.
13. Moulasa Imamsa Walikar,Mahomedan,40,rest Do.
14. Mudesa Imamsa Walikar,35,rest Do.
15. Tulsabai kom Venkatrao Kulkarni,42,house-hold affairs, residence Nidgundi in the house of defendant no.2. Defendants.
16. Karigoudappa Sultanappa Beredar,Handesvar,48,agriculture, of Wadwadgi. ... ...
17. Ramchandrappa Yerbhadrappa Patter,Panchal,55,agriculture, of Balbatti. ... ...
18. Basappa Sarbanna Baligar,35,Hindu,merchantile,of Guledgud, taluka Badami. ... ...
19. Tippanna Sarbanna Baligar,Hindu,32,merchant,Guledgudd.
20. Nachappa Sarbanna Baligar,Hindu,28,merchant,Guledgud,taluka Badami.
21. Irappa Yelgurdappa Nisbat Desai,of Wadwadgi,taluka Muddebihal, Mut-Mukhtyar of defendants. ... ...

Claim-Rs.

Judgment.

Suit in forma pauperis to obtain the following reliefs:-

(a). "It should be declared that the plaintiff admittedly being a lineal descendant of the acquirer of Sanad No.2404 has got existing interest in the hereditary character of the entire watan".

(b). "It should be declared that all the decrees,etc.,against Swamirao plaintiff's father,have been obtained through fraud and as such have no force ".

(c). "The Bombay Province or its servants be directed to issue certificates under the provisions of the Pension Act to the plaintiff issuable after the declaration of his watan rights over the entire watan for his claims regarding cash allowances".

The suit is also brought to obtain incidental reliefs in connection with the watan.

2. The plaint is based onthe allegations that the twp villages of Areshankar and Wadwadgi(part of Desai watan),were mortgaged by one Kalova to the plaintiff's grand-father Shriniwas,who was the watani Karkun,that the possession of the --

51 1449 57

villages was given to him,that Shrinivas in execution bought the villages,that subsequently one Padappa filed a suit to have it declared that the bond executed by Kaleva to Shrinivas was null and void and for possession of two villages,that a decree was passed in his favour,that thereafter the plaintiff's father instituted a suit,that it was dismissed,that the decrees against his grand-father and his father "were obtained through fraud and they are not binding on him".

3. The defendants in their written statement deny the allegations made in the plaint.They submit that the suit is barred as res-judicata.

4. The following issues were framed by my predecessor in office.

1. Is the plaintiff's claim for restoration of possession barred under section 4 clause 1 of the Bombay Revenue Jurisdiction Act 1876 ?

2. Is the plaintiff's claim to amend the registers and to enter the plaintiff's name in the Revenue records barred under section 4 clause 'd' of the said Act ?

3. Is plaintiff's suit in respect of cash allowance tenable without a certificate from the Collector under section 5 of the Pensions Act ?

4. Is plaintiff's suit for declaration that the plaintiff is a Representative Watandar barred under section 25 of the Watan Act ?

5. Is the contention of the plaintiff that he is a watandar of the same watan not barred by res-judicata and principles of res-judicata and estoppel by the judgments and decrees in C.S.No. 1007 of 1887 and the Privy Council decision reported in I.L.R. 24 Bombay 556,High Court Second Appeals Nos. 365 of 1929 and 223 of 1931 and others ?

6. Are not the decisions and decrees above referred to binding upon the plaintiff ?

7. Does plaintiff prove that Shriniwas was watandar of the same watan as that of defendant no.6 or his ancestors ?

8. Does plaintiff prove his ownership coupled with watan rights as stated in para 31 of plaint ?

9. Is plaintiff's suit in time ?

10. Is plaintiff entitled to the declarations and injunction and possession prayed for by him ?

11. Is plaintiff entitled to any and if so what amount as past mesne profits and damages and interest and from which of the defendants ?

12. Is plaintiff not estopped from bringing this suit in view of the partition award decree passed between him and the members of his joint family in Mnddebihal civil suit no.123 of 1909 ?

13. Is plaintiff entitled to bring this suit in face of the orders of Revenue authorities passed against him under the Watan Act ?

14. Is plaintiff entitled to any relief against defendants nos.2 to with regard to property in suit which is in their possession as owners ?

15. Are defendants in adverse possession against the plaintiff for more than 12 years so far as the property in suit in their respective possession is concerned and as such have become presumptive owners of the same ?

16. Is the notice under section 80 C.P.C.legal and proper and if not, is the suit maintainable ?

17. Is the suit bad for misjoinder of defendants and causes of action ?

18. Are defendants entitled to compensatory costs under section 35A.of C.P.C. are the defences set up by defendants vexatious and frivolous ? Is plaintiff entitled to compensatory costs from them ? If so,what amount ?

19. Does plaintiff prove that the suit property is impartible watan property and is governed by the rule of lineal primogeniture ?

20. What orders ?

21. Whether plaintiff proves that the sale certificate cancelled was obtained under fraud as alleged by plaintiff in paras 12,21 and 43 of plaint

22. Can the plaintiff claim the watan portions in questions adversely to his father or not ?

6. My findings are:-

1. Unnecessary in view of my finding that the suit is barred as res-judicata.

53 to 9

2. Unnecessary.

3. Unnecessary.

4. Yes;the suit is barred as res-judicata.

5. Is barred as res-judicata.

6. They are binding.

7. The allegation is barred as res-judicata.

8. No.

9. Does not arise.

10. No.

11. No.

12. Is estopped.

13. Unnecessary.

14. No.

15. Unnecessary.

16. Unnecessary.

17. Unnecessary.

18. I am not inclined to grant compensation.

19. Does not arise.

20. General issue.

21. No.

22. Unnecessary.

Reasons.

6. In view of the number of times that the litigation between the parties has been before the Courts upto the Privy Council,and the numerous decisions with regard to the various items of dispute between the parties,I think,it will be necessary to have a clear statement of the facts.The facts of this case are to be found in 1 Bombay 248,18 Bombay 22 and 24 Bombay 556.The necessary facts are also stated in the judgments of the High Court in Appeal No. 865 of 1929(Ex.225),and in Appeal No.223 of 1931(with Second Appeals Nos.224 and 282 of 1931)(Ex.227).

7. Bhujangrav Desai died on the 27th.September,1847,leaving two widows Kalova and Ramova.In the following year,Padappa was born to Ramova.On 15th.September,1865,Kalova mortgaged the two villages of Areshankar and Wadwadgi (part of the Deegat watan),to Shriniwas -

(plaintiff's grand-father),who was the watani Karkun,the considera-
-tion recited in the bond being a sum of Rs.9,900.Possession of the villages was given to Shriniwas,the village officers being directed to pay him the revenue. Later,Shriniwas filed suit no.203 of 1870 against Kalova to recover the revenues ending in a decree.As Kalova did not pay this sum,Shriniwas in execution bought the villages.In the meanwhile,Shriniwas was forced to file another suit against Kalov (No.59 of 1873),for the revenues of two years and for restoration for possession as mortgagee because the Collector in 1873 had cancelled the sale under the Watan Act.He obtained a decree on the 5th.June 1873 and recovered possession of the villages through Court in 1875.

8. On 4th.December 1878,Padappa filed suit no.1299 of 1878 against Kalova and Balappa and prayed that he might be declared the son of the deceased Bhujangrav and the adoption of Balappa by Kalova be set aside. The Subordinate Judge found that Padappa was the legitimate son of Bhujang-rav and that the adoption of Balappa was not valid.Balappa made a second appeal to the High Court.The High Court confirmed the decree of the trial Court and the first Appellate Court.

9. Padappa having established his legitimacy and Kalova being dead,the Collector in 1878 entered the watan in his name.On 16th.August 1887,Padappa filed a suit against the sons of Shriniwas to have it declared that the bond executed by Kalova to Shriniwas on 16th.September 1865 was null and void and for possession of the two villages;and in the alternative,for redemption of the mortgage.

10. The Subordinate Judge found (1).that the mortgage of Rs.9,900/-relied on by the defendants was not proved,(2).that the mortgage debt was not proved to have been contracted by Kalova for lawful and necessary purposes,(3).that the property mortgaged was watan and was not liable for the debt and that the plaintiff's cause of actionarose in the month of February 1886 when the Revenue Commissioner's order was passed.He therefore,allowed the claim.

11. The defendants appealed. The High Court amended the decree of the Subordinate Judge,"by allowing the plaintiff to redeem the villages of Arashankar and Nadwadgi on paying,within six months,the sum of Rs.9,900/- with 12 percent simple interest and in default of payment,his mortgage will be foreclosed".(12 Bom.22).

12. The plaintiff appealed and their Lordships of the Privy Council reversed the decree of the High Court and confirmed the the decree of the trial Court.The judgment of the Privy Council appears in 24 Bombay 556.

13. There was again litigation between the parties.In appeal (Appeal No.866 of 1921),Baker J.observed as follows:-

"I admit that if the suit which ended in the Privy Counc had been a suit merely for a declaration that the mortgage executed by Kaleva was not binding on her,successor Pandappa, and there had been no prayer for possession of the village,then it might have been said that this question of the Court sale wa quite foreign to that mortgage and that it was necessary that i should have been pleaded.But when the plaintiff asked for posse -ion,it was a matter which might and ought to have been made a ground of defence and as a matter of fact,by reference to the written statement I have pointed out that it was made a ground of defence and although no direct issue was framed on it,it may be held to have been covered by the issue regarding possession" (Ex.225).

14. The contest in subsequent suits lay again between the same parties in connection with the question whether the Commission- -er's orders directing the payment of full rent to the Inamdars were illegal.In giving judgment Broomfield J.said:-

The issue was thus answered against the plaintiff's contenti

"The argument that Swamirao(plaintiff's father),is entit: -ed to rely upon his rights as auction purchaser and upon his alleged title by adverse possession has already been considered by this Court in Second Appeal No.865 of 1929 which arose out - of a former litigation between the same parties.It was held by Mr.Justice Baker that the matter is res judicata.The contention that Shriniwas was a watandar of the same watan does not seem to have been made in the former litigation but it undoubtedly ought to have been made as a ground of defence in Padappa's - suit and it is not open to the appellant to put it forward now. I may mention that the lower Courts have held here that in fact he was not a watandar of the same watan.The learned Advocate

for the appellant has frankly conceded that in view of the decision in Second Appeal No.865 of 1929 it is not possible for him to press this part of his case".

15. Now the plaintiff has instituted this suit in forma pauperis and the grounds of action are:Firstly,that "it should be declared that all the decrees,etc.,against Swamirao plaintiff's father have been -- obtained through fraud and as such have no force". Here it is observable that he has not led oral evidence in proof of his case.He rests his case on documentary evidence. In the absence of evidence in regard to the -- alleged fraud practised on his father in the matter of decrees and other proceedings,my finding is that they are binding on the plaintiff.

16. The real ground which the plaintiff claims that he is a nearest heir for the purposes of section 36 of the Bombay Hereditary Offices Act and that the rule of lineal primogeniture shall be presumed to prevail in t family,is that he is a watandar of the same watan. I cannot accept his --- contention because services were commuted though the tenure continued to be watan.Secondly,because the two villagers were part of the Desai watan, while the plaintiff is a Vatani Karkun. Consequently,the family of the -- plaintiff cannot be considered a Desai watandar family for the purposes of the Act of 1886.The law is that a person who merely acquires watan property without acquiring the office is not a watandar and to such a person and his family,the special law of inheritance enacted by the Watan Amending Act of 1886,has no application.Another thing is that the contention is barred as res-judicata as observed by Broomfield J.in Appeal No.223 of 1931.(Ex.227).

17. To sum up: Padappa became entitled to the two villages in accordan -ce with the judgment of the Privy Council reported in 24 Bombay 556.The -- finding was that Kalova held possession as watandar and in no other charact Consequently,she could not make any alienation which would be valid against her own heir.It is unnecessary to discuss this topic further because the -- subsequent decisions have also declared that the mortgage was void against Padappa and his heirs.

18. It would appear that certain chaurat lands forming part of this -- Desai watan had come into the possession of the plaintiff's grand-father. They were not included in the former litigation. Subsequent events happened by which the plaintiff brought a suit against his bhaubands for the separ -tion and delivery of his share in the chaurat lands and other properties.

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there was a deed of reference ending in an award decree.(Exs. 167 and 203).Now the plaintiff does not allege that the -- partition was unfair or unequal.In any case,he has not led evidence on this point.His whole point is that he is a watan-dar of the same watan and as such he is exclusively entitled to the shaurat lands originally forming part of the Desai -- watan since "the rule of primogeniture shall be presumed to prevail in the watan family under section 26 of the Bombay Hereditary Offices Act": For the reasons already mentioned, I cannot accept his contention.

19. In the result,the suit fails and is dismissed with costs. The Government to recover the deficit Court fee from the plaintiff. A copy of the decree to be sent to the Collec-tor.

Sd. A. C. Sequeira,
28-7-48. Civil Judge(Sr.Dn).Bijapur.

"True Copy"

Dist. Govt. Pleader
Bijapur

59 1C

Decree in original suit under 20 rule 6-7.

Form No.1, Appenx.D.Schedule 1.

D e c r e e.

In the Court of the Civil Judge,Sr.Dn., Bijapur.

Civil Suit No.48 of 1945.

1. Venktesh Swamirao Deshmukh of Samat Parvati and Paragana Nidgundi ,Brahmin,age 65, occupation begging,resident at Yelgur, Taluka Muddebihal,District Bijapur. .. Plaintif

Versus.

1. The Province of Bombay.
2. Pandurang Shriniwas Parwati,Brahmin,age 27, Occupation Agriculture ,residence Nidgundi, Taluka Bagewadi, District Bijapur.
3. Gurunath Swamirao Parvati,Brahmin,age 50, Occupation Agriculture,residence Nidgundi, Taluka Bagewadi. .. ..
4. Narayan Gurunath minor by guardian,father Gurunath Swamirao,age 10,Brahmin, occupation student,residing Nidgundi,Taluka Bagewadi.
5. Venkatrao Parvatrao Parvati,Brahmin,age 60, Occupation Pleader,residence Bijapur.
6. Shivanappa Yelgurdappa Desai,Chatriya,Hindu, age 45,Occupation land-lord,residence - Wadwadgi,Taluka Muddebihal. .. ..
7. Chandramappa Yelgurdappa Desai,Chatriya Hindu,age 48,Occupation Agriculture,residence Wadwadgi Taluka ~~Mxgwxx~~ Muddebihal.

8. Chanasangappa Balappa Desai,Chatriya,age 28,Occupa-
-tion,Agriculture,residence Wadwadgi Taluka Muddebihal.

9. Bhujangappa Appasaheb Desai,Chatriya age 38, -
Occupation Agriculture,residence Wadwadgi now at
Kotikal Taluka Badami. .. ..

10. Yelgurdappa Erappa Nisbat Desai age 30,Hindu,age 27,
Occupation Agriculture,residence Wadwadgi.

11. Ramachandra Erappa Nisbat Desai,Hindu ,age 27 ,
Occupation Agriculture,residence Wadwadgi.

12. Erabasappa Erappa Nisbat,Desai,age 24,Hindu,
Occupation Agriculture,residence Wadwadgi.

13.Moulasa Imamsa Talikar,Mohamadan,age 40,Occupation
Agriculture,residence Wadwadgi.

14. Mudesa Imamsa Talikar,Mohamadanage 45,Occupation
Agriculture,residence Wadwadgi.

15. Tulsabai Kom Venktrao Kulkarni,age 42,Occupation
House -hold- affairs,residence Nadgundi. ... ...

16. Karigoudappa Sultanappa Biradar,Handelavar,age 48,
occupation Agriculture,residence Wadwadgi.

17. Ramachndrappa Virbhadrappa Pattar,Panchal,age 55,
Occupation Agriculture, residence Balhatti.

18. Basappa Sarbanna Baligar,age 35,Hindu,Occupation
Merchanttile,residence Guledgud ,Taluka Badami.

19. Tippanna Sarbanna Baligar,Hindu,age 32,Occupation
Merchant,residence Guledgud.

20. Muchappa Sarbanna Baligar,Hindu,age 28,occupation
Merchant,residence Guledgud,Taluka Badami.

21. Irappa Yelgurdappa Nisbat,Desai of Wadwadgi,Taluka
muddebihal,age 55,Mukhtyar of Defendant No.1. .. Defendants.

Filed on :- 19-4-1945.

Registered on :- 19-4-1945

Claim Rs.

The plaintiff's case is as under:-

1. Plaintiff sues the Bombay Province and the
Defendants named above for a declaration that he is
the representative Watandar in respect of the suit

property mentioned in the accompanying schedule which forms part of the Paragana Deshmukh Watan of of Samat Parvati and Paragana Nidgundi in Badami,Muddebihal and Bagewadi talukas of District Bijapur.Plaintiff also claims declaration that he is the owner of the suit properties and possession thereof with past and future mesne profits together with records in connection with the suit properties.

2. The Samat Parvati and Paragana Nidgund though being in different talukas constitute one Paragan watan and in respect of both of them only one Sanad,being Sanad No.2445 was issued by the British Government in 1886.The family of the plaintiff is the watani gumasata family of the said Deshmukh watan and the heriditary righ of the family of the plaintiff in the said paragana - watan was created prior to the British Government in the year 1653,by a grant in respect of portions of both the Paragana from the predecessors in title of the present holder of the Deshmukh watan.The grant was recognised by the then ruling power and later by the British Govern--ment when the Gordon Settlement Commission recongnised the grant,betowed Deshmukh-ship on the plaintiff's - family and issued Sanad No.2404 in 1874 in favour of the plaintiff's grand father Shriniwas Swamirao Karkoon, Samat Parvati in respect of Survey No. 108 and 109 of Hardoli in Badami taluka .These lands form part of the Deshmukh watan of Samat Parvati and Paragana Nidgundi.

3. By virtue of the above referred grant and Sanad No.2404 the plaintiff is the watandar of the same watan as that of defendant No.6 Shivanappa who claims to be the holder of the Deshmukh Paragana watan of Samat Parvati and Paragana Nidgundi under Sanad No.2445.

4. One Bhujangarao was the holder of the Deshmukh watan in the year 1947.On his death in about that year,

leaving behind him two widows,Kalawa and Ramawa the former as the senior succeeded to the Watan,her right to succeed to this watan was recognised by the Revenue authorities by an order dated 15-2-1849 against her step son Padappa,the originator of this litigation.

5. In 1863,The Gordon Committe declared the watan rights of Kalawa and effected a settlement with her in 1864.

6. Kalawa mortgaged with possession both the Inam villages Wadwadgi and Areshankar on 15-9-1865 to Shriniwasrao plaintiff's grand father who was a watandar of the same watan as her own,for legal necessity She on 29-9-1865 made a grant to the said Shriniwasrao of some lands of Wadwadgi and Areshankar and part of the Cash allowances of those villages.On 16-4-1869 Kalawa mortgaged with possession to the said Shriniwasrao lands situated in six Government villages.On 9-8-1869,she made a grant of some more lands in those villages. Prior to these alienations her husband Bhujangarao had made a grant of some lands of Wadwadgi and Areshankar to the said Shriniwasrao in 1844.The properties in this suit are all the properties comprised in these grants and possessory mortgages together with lands under Sanad No.2404 and prior grants.

7. Shriniwasrao filed suit No.203 of 1870 against Kalawa for mesne profits of the said villages under his possessory mortgage and obtained a decree.He sued out execution of decree in Suit No.203 of 1870 in Darkhast Nos. 18 of 1872 and 84 of 1873 and brought to sale the equity of redemption of Kalawa in the two Inam villages and lands under the mortgage situated at Nidgundi ,Jiralbhavi and Budihal (in Bagawadi and Muddebihal talukas) respectively and purchased them himself.He obtained the necessary two sale certificates in respect of sale held in both the Darkhasts and both the sale certificates were duly registered on 14-1-1874.Again in 1873,Shriniwasrao got a money decree against Kalawa and some

63 10+2

other lands mortgaged were brought to sale and bought by himself. The equity of redemption of Kalawa in them was thus purchased and the necessary sale certificate was - obtained and was got registered on 16-7-1874. The lands wer already in his possession under the mortgage and subsequen to sales stated above Shriniwasrao continued in possession of them as fullowner. The possession of the villages which he held under the possessory mortgage had been disturbed by Kalawa and Shriniwasrao on becoming full owner by virtu of the sale of equity of redemption of Kalawa in the Inam villages Wadwadgi and Areshnakar obtained possession of the two villages on 23-24 July 1875.

8. Thus Shriniwasrao became full owner of all the lands cash allowance ~~of them this his death~~ and Inam villages in suit and he continued to hold possession of them til his death in 1880. Except for a brief space of ti in respect of Inam villages alone when they were palced under attachment on account of arrears of land revenue.

9. Plaintiff~~(plaintiff)~~ was born in 1879 in the life time of his grand father Shriniwasrao. On the death of Shriniwasrao, plaintiff's father, Swamirao continued in possession as owner as by survivorship in the Mitakshat-a Hindu joint family.

10. Ramawa, the second wife, of Bhujangrao gave bir to a son, Padappa on 15-9-1848 i.e, 12 days less than one year of the date of his father's death. The revenue - authorities refused to recognise his legitimacy. In 1872 Kalawa referred to above adopted one Balappa as son to he husband. Padappa fibed a suit against Kalawa and Balappa for an injunction to restrain them from obstructing him performance of Shradha of Bhijangarao as the son of - Bhujangarao. He had purposely refrained from claiming the property which was held adversely by Kalawa, as in that ca his suit would have been barred by limitation. Padappa was granted a decree and the adoption of Balappa as son to

Bhujangarao was set aside as he was self adopted. Kalawa died in November 1877 and Padappa moved the Revenue authorities to recognise him as the heir to Kalawa. The Revenue authorities on the findings of the Civil Court recognised Padappa as the heir to Kalawa in 1878.

11. In the year 1876 both the Inam villages were brought under attachment by Government for non-payment of Government dues from the purchaser Shriniwasrao. During the period of attachment in 1878, Padappa obtained a sale cancellation certificate under section 10 of the Watan Act regarding only the sale of Inam villages Wadvadgi and Survey No.61 of Bidihal i.e., portions from Two different sales. The certificate was both illegal and void as section 10 of the Watan Act could not apply to the sale in question. However, the scope of the cancellation is defective but the Civil Court acted on it and cancelled the sale in respect of the said two properties in accordance with the cancellamation certificate. However, the order cancelling the sale was never brought into operation. But in 1881 the sale ~~was~~ cancellamation certificate was utilised by Padappa as a piece of evidence against Swamirao the heir of the purchaser in his efforts regarding the removal of the said attachment wherein Swamirao failed to contend that he was a watandar of the same watan. The Collector of Kaladgi refused to remove the attachment infavour of Swamirao, but on the contrary removed the same in respect of Padappa. In appeal the Revenue Commissioner S.D., reversed the order of the Collector and directed Padappa to obtain a decree of a competent court which direction was upheld by the Government. The said villages were ordered to be made ofer to Swamirao, the plaintiff's father as son of the purchaser from whom the said attachment was effected.

12. Thus both the proceedings regarding the heir-ship on the death of the alienor Kalawa as well as the issue of the ~~xxxx~~ sale cancellanation certificate against the alienee Shriniwasrao were not regularly inquired into.

Consequently the heirship of the said Shriniwasrao in res-
-pect of the purchased Nidgundi Paragana portions remained
untouched.

13. On the efforts of Padappa ,Sanad No.2445 was iss
to him on 22-12-1886 wherefrom he became watandar but unde
the said Sanad,he is not full owner tothe entire property
mentioned in it,because plaintiff's grand-father's -
(Shriniwasrao's) ownership hal already been established
prior to the issue of the said Sanad over Nidgundi Paragana
plaintiff's portions by virtue of grants and court sales
in favour of plaintiff's grand father Shriniwasrao who was
a watandar of the same watan.

14. In 1887,Padappa filed Suit No.1007 of 1887 agains
Swamirao and his younger brother Devrao for redemption of
the mortgage of 15-9-1865 in respect of the Inam villages
to avoid the bar of limitation already ruled against Padappa
Plaintiff was not made a party to this suit though he had
an interest in the mortgage security.The suit and decree
obtained thereon are not therefore binding on the plaintiff

15. Padappa in his suit also contended that the
mortgage passed by Kalawa was not binding on him as the
suit property being a watan property,the alienation made
by his step mother terminated with her death.He also -
contended that the Court sale had been cancelled in to -to
by virtue of the Collector's certificate under section 10
of the Watan Act but really it is against the provision of
the Act as it is against the Watandar of the same watan
and moreover it is not in respect of all the property sold

16. Though in fact,the said sale cancellation -
certificate related to village Wadwadgi and Survey No.61 of
Mudihal only,plaintiff's father and uncle ,failed to conten
that the certificate relied on by Padappa referred only to
the Inam village Wadwadgi and Survey No.61 of Mudihal and
did not affect other property i.e. Areshnakr etc.,and that

they were watandars of the same watan as Kalawa or Padappa and thatthe Court sale in no way contravened the Provisions of the Watan Act.They also failed to contend that it was illegal and ultra -vires of the Provisions of section 10 of the Watan Act.But they urged that by virtue of the Court sale ,of the equity of redemption of Kalawa, they were full owners of properties in Suit No.1007 of 1887 as the said sale was effected prior to the introduction of the Watan Act. And this was not challenged by Padappa.

17. The result was that it was that though it was accepted that the mortgage passed by Kalawa was legal and valid,that Shriniwasrao was the purchaser of the equity of redemption in the mortgaged properties and was therefore the owner thereof.But the litigation was lost by the plaintiff's father and uncle as it was held by the First Class Sub-Judge that the property being the watan property, the alienation was not bidding on the successor of Kalawa.In appeal this was reversed and redemption was allowed to Padappa.

18. Lastly in second appeal the privy Council supported the order of the original court.Later on,in 1945,Swamirao got amended his status as watandar of the same watan in his suit No.156 of 1924 in the Muddebihal, Sub-Judge's Court against Bhimabai,wife and heir of Padappa and defendant No.6 Shivanappa for an injunction restraining them from collecting the revenues of the said villages and there for the first time he urged that he was a watandar of the same watan as Kalawa or her sucessor.While in previous litigations Swamirao had not contended that he was a watandar of the same watan and the High Court of Bombay in their judgment in Second Appeal No. 865 of 1929 particularly noted the fact of his never before having contended that he was a watandar of the same watan.

19. Defendant No.6 relies on the above judgment

though the findings and observations are against him. Further even in the proceedings before the Prant Officer, S. D.neither defendant No.6 nor defendants Nos. 2 and 3(the main defendant challenged the plaintiff's ownership over the lands of Nid-gundi Paragana or the fact of his being a watandar of the same watan.

20. There was partition between plaintiff and his father Swamirao and his other sons of whom defendant No.3 is one.In this partition the watan and watar rights and the watan property were not included.On the death of Swamirao,the Revenue authorities ought to have enquired into the heirship as regards watan rights,and in particular about Hariolli lands but no such enquiry was held.

21. Moreover in this case decided the Privy Council it is impossible for an issue to be there regarding the watan rights of Swamirao when his material defence is in respect on non-watan character of the plaint villages as per page in I.L.R.24 Bom.These facts have been supported when Shivanappa - defendant No.6 and his predecessor Bhimabai gave up their claimobtained under thedecrees against Swamirao in the Dar-khast proceedings under section 47 of C.P.C. in favour of plaintiff alone as we had revealed the chain of fraud - perpetrated by Padappa their predecessor .

22. In the course of Padappa 's effort in getting back alienated portions he any how got fabricated the village - records viz. Inam register i.e. land alienation register of Nidgundi such as:-

23. One Yelgur Venkatesh's name is inserted since 1887 i.e.by the very issue of Sanad No.2445 against the said Sanad as well as the Land Alienation Register maintained by the Mamlatdar of Bagewadi regarding Survey Nos.38 and 48 a portion of the plaint lands.

24. And himself in 1873 having obtained a certificate under section 10 of the Watan Act,in 1903 again tried for the

some kind of certificate in respect of the same Survey No.61 of Budihal but to no purpose (Vide G.R.No.3740 of 1909). By this it is clear that the certificate of 1878 remained - unexecuted. Thus the cancellation of sale regarding survey No.61 of Budihal is once approved by the Collector in 1878 and at another time in 1909 is rejected by the Government.

25. Moreover his efforts for the cancellation of sale are neither for all the sold portions nor at least for all the portions sold under one sale proceedings.

26. Finally, the sales of the plaint lands of Kidgundi Paragana not withstanding the held staus of Swamirao as non- -watandar are even now in forceeven without any burden ofJudi.

27. But recently the Collector of Bijapur at the request of the said Bhimabai, having made some adjustments in the Mahal Judi Register of Nagewadi and Muddebihal - talukas, is extracting the judi etc. from the deceased - Swamirao and his decendents i.e., defendants Nos. 2 and 3. These acts of the Collector contravene the provisions of the C.P.C. as well as those of the Watan Act and even against those of the Land Revenue Code as the revenue were being credited timely.

28. The said Bhimabai had proceeded under Watan Act against one Bhimabai Gurnath, holder of Sanad No.2403 and Bhauband of the plaintiff and others regarding Survey No.118 of Wadwadgi which was rejected by the Revenue - Commissioner S. D. on the groudn of opponents being watandars of the same watan by virtue of grant of the year 1701 Phasali Similarly plaintiff also is a watandar of the same watan by virtue of the said grant as well as the Sanad No.2404.

29. On the whole neither Swamirao nor the Civil Courts could apprehend Padappa's approbation and reprobation of one and the same transaction effected under one execution of Darkhast No.18 of 1872, in acquiring the sale cancella- -tion certificate in respect of village Wadwadgi only as well

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as in utilising the same as a piece of evidence in respect of both the villages for his own advantage and relief and to the prejudice of his adversary namely plaintiff's famil status as watandar of the same watan.Plaintiff inspite of the decisions against the status of Swamirao as a watandar has every legitimate right to re-open the question in resp of the watan rights as stated above.The plaintiff was born in the life of time of his grand father Shriniwasrao acqui of Sanad No.2404 and Nidgund Paraganas portions in questio has vested interest in the plaint watan as representative watandar to his family portions as well as watandar of the same watan as Kalava or her successor by virtue of Sanad No 2404 and 2445 both being in respect of the plaint watan.

30. Plaintiff's father's name has been entered in the watan register as representative watandar in respect o Hardoli lands in 1880 and he has lost his watan rights as representative watandar as he did not put up his rights as watandar of the same watan at the time he should have in Suit No.1007 of 1887.Plaintiff in title,claims the watan through his grand father and not through his father.And he not bound by the Acts and omissions of his father Swamirao after the latter seceeded to this watan.During the life t of plaintiff's father,the plaintiff could not have taken a ction in regard to his watan i.e.the property in the suit Swamirao died on 9-12-1932 plaintiff informed the village officers on 18-2-1933 through post to enter his name in th Record of Rights as watandar owner.No inquiry was institut for the portions of Badami and Muddebihal taluka. The - Mamlatdar of Bagewadi held inquiry and informed the plaint to get his watan rights ,if he had any,established in a pr court as his father,Swamirao was a non-watandar to the - Nidgundi Paragana lands.

31. Thereon by virtue of Sanad No.2404 and 2445 on 3-9- 1937 ,plaintiff approached the Collector of Bijapur for his family properties in both the divisions of the Dis

District, the proper authority having jurisdiction to con-sider for declaration of his watan rights coupled with his owner ship over the plaint ~~xxxxxxx~~ portions as a represenata-tive watandar viz. lands at Hardoli, taluka Badami, at Yelgur, at Kashinkunti, at Bailhal, at Vadwadgi tluka Muddebihal, at Nidgund, at Jiralbhavi and at Areshankar taluka Bagewadi, both the Inam villages viz., Vadwadgi and Areshankar together with all the village sites inhabited and uninhabited and out of the cash allowances payable from the Sub-treasuries of Muddebihal and Bagewadi, Rs. 35/- and 15/- respectively as well as declaration of his watan rights as representative watandar as well as watandar of the same watan with defend-ant Shivanappa and for registration of his name in the respective registers of the Collector and for declaration of Defendant Shivanappa's having no ownership over the plaint villages by virtue of Court sale in 1873 as already held over Nidgundi paragana lands, assessed at more than Rs.600/- by the same kind of sales of 1873 and for declaration of his younger brother defendant No.2 and 4's having no existing interest of the hereditary character in the plaint watan as already held in respect of Nidgundi Paragana portions in question. And of their having no ownership coupled with watan rights over Hardoli lands and for possession of the accounts, books of both the villages from defendant No.6 since 22-12-1886 the date on which Sanad No.2445 was issued to Padappa, and for possession of other watan papers from defendant Nos. 2 and 3 and all the watan properties with mesne profits together withall the necessary damages thereon from all the defendants. Since 9-12-1932 the date on which the plaintiff's father Swamirao Shriniwarao Parvati holder of Sanad No.2404 died.

32. But the Collector illegally directed the plain-tiff to approach the respective Prant Officer, whereby the claim was split ~~xxx~~ into pieces. In this matter Government directed ~~xxxx~~ him as follows:-

" I am directed to state that you should approach each Prant Officer at once and concurrently not ~~consecutively~~ Consecutively with refernece to your property in the jurisdiction of the Parant Offices as per Government order No.27701-F of - 29-9-1938".

32. Plaintiff accordingly on 2-11-1938 was obliged t submit, one application to the Prant Officer, N.D., and two to that of S. D., against the registered persons with a request for a joint hearing on the ground of parallelism. But the P.G.S. D., the subordinate of defendant No.1 dis--regarding the proper procedure and the bar of Resjudicata and ignoring the proper meaning of the term "Heriditary office or watan as used" in the decision of the Gordon Commission as well as in the act and the facts of sales regarding the lands being in force coupled with the non--traversing admissions of the defendants , and overlooking the expalanations offered by the plaintiff regarding fraud perpetrated by Padappa. So also the inconsistencies in the decisions passed against the deceased father, has relied solely on the irrelevent decision of the Privy Council in one more accident case and passed on 28-10-1939, two summary-parellel orders, but out of the ~~xxxx~~ ediquate of parallelism and against the definition of the term some watan as ~~xxx~~ well as the terms of " Plaint Janads" and consequently prejudi--cial to the plaintiff's legitimate rights such as the one applying cl.3 of section 36 to the unenquired entries, and to the claims not being from the deceased representative watandar and the other on the ground that the ~~heriditary~~ deputy is not a watandar of the same watan.

34. Plaintiff , without casting any imputation on the staff preferred a joint appeal to the Collector who sent it to the original court for a report being made on taking the party's statements and their respective pieces of evidence.

35. In answer to this , the Prant Officer S. D. held summary inquiry regarding this claim o. parellel applica-

-tions both the sets of defendants namely Shivanappa as well as Pandurang and Gurunath the nominal watandar and adverse holders respectively to the Chavarat lands situated in Government villages of Nidgundi Paragana have not challenged to the ownership coupled with watan rights of the plaintiff because decidedly the former has no ownership and the latter have no existing interest of the heriditary character in the watan. Thereon the Prant officer S.D. made two reports one in the month of September and the other in December 1940, contradicting the records of his own preliminary hearings and at the same time concurring with the order regarding Nidgundi Paragana and differingfrom that regarding Hardoli lands. He, however, frankly expressed his opinion that the applicant, Venktesh Damirao being the eldest son of the deceased is entitled to be registered as heir according to the rules of Lineal primogeniture. But the Collector neither considering the recommendation for registering the plaintiff's name by the Prant officer, nor the applicability of sol. 8 of section 36 to the uninquired entries nor to the claim from the pre-deceased nor to the functions of the Gordon Committee in issuing the plaint sanads nor the double name of the Watan prescribed in Sanad No.2404 nor the illegal findings nor the inconsist reports regarding the parallel applications nor the essential meaning of the term " Heriditary Deputy as well as the term" same atan nor the non-traversing admission of the defendants regarding the plaintiff's watanrights coupled with his ownership over the lands of Nidgundi Paragana situated in S.D. rejected on 6-2-1941, the joint appeal summarily and supported the anti-parallel orders of the Lower Courts without any adjudicate grounds for doing so by two orders of the same style and fashion of the Prant officer S. D.'s orders.

36. The plaintiff approached the revenue Commission S.D. in revision who also rejected the application summarily. Plaintiff approached the Government for reorders of his -

wrongs but they also dismissed summarily and further - refused to consider the same.

36. The plaintiff submitted an appeal to the Revenue Tribunal who dismissed it on the ground that his case was not one coming under the jurisdiction of the Revenue Tribunal .However it is ruled in part II of the Tribunal ruling at page 113 that Government Revenue not affected.

37. As for the application before the P.C.N.D. the P.C.N.D.on 24-4-1941 rejected the last application of the parallel one on the same stybe and fashion of the Mr Collector's order dated 6-2-1941 for which an appeal was pending before the Collector. Plaintiff brought to the notice of defendant No.1 the mis use wrought by its - servants and the reasons in disposing the questions by the C.D. by a notice under section 80 of the C.P.C. with a request for a joint hearing as required by the principle of Parallelism .After the receipt of this notice under section 80 C.P.C. defendant No.1's subordinate neither considered the illegal handling of the parallel applicatio by the Revenue authorities nor the jurisdiction of the Civil Courtin declaring the watan rights of a person now the reasons in the appeal memo erroneously differing from the previous decisions with no effect,directed the plaintiff to the Civil Court whereby he was obliged to file a second appeal to the Revenue Commissioner S.D.who also rejected it - summarily on 16-1-1943.

38. Thus the Revenue remedies have been exhausted and the cause of action for an entire claim arose on the date of 16-1-1943 when the Revenue Commissioner S.D. - refused to consider the anti parallel orders .Because the cause of action to establish the title and the cause of action to recover possession of his watan property wi mesne profits together with interest by way of damage on

such title are not distinct and independent of each other.

39. The plaint property is situated in Badami, Muddebihal and Bagewadi talukas of this district. The parties also reside within this district. Hence this court has jurisdiction to decide this case.

40. Defendant Nos. 2,3, and 4 who are the decendents of the plaintiff's divided father are wrongly in possession of the portions held by them. They have no existing interest in the watan. Besides the watan is impartible and as collateral defendants ,2,3 and 4 have no interest in it.

41. In like manner some watan lands of Yelwadgi are in the possession of Venkatrao Parvatrao Parvati, defendant No.5, Yelgurdappa Krappa and Ramachandra Krappa and Yerabarappa Krappa, Moula Saheb Imamsaheb and Buddesa Imansahebwho claim to hold under Swamirao Pandurangrao and Gurunatha. But these lands being watan lands, Swamirao as well as Pandurangs and Gurunath cannot dispose of the watan lands and the respective persons cannot set up their title watan rights. Defendant 15 claims to hold two lands as a mortgagee, but the lands being watan land cannot be encumbered so as to affect the rights of the plaintiff. Hence all Re-made parties

Defendant Shivanappa and the plaintiff are watandars of the same watan as both are holders of the same hereditary office or watan. Shivanappa cannot set up his title over the plaint portions of Hidgundi Paragana either under Sanad No.2145 or under the fraudelent decrees obtained against Swamirao. And defendants, Chandramappa Ghanabasanna and Bhujangappa Bhaubands of Shivanappa have derived their respective titles from the said Badarpa or his successors who had no ownership over the plaint portions. They all being the members of this watan family declaration of title and possessions of the portions are sought against themand hence they are made parties to this suit.

Defendants Marigoudappa,Ramachandrappa,Basappa, Hippanna,Hanmappa ,who claim to hold under possessory and simple mortgage,have no rights as against the plaintiff,and are necessary parties.The said lands is claimedfree free of encumbrance.

As for Jat Inam Survey No. 106 of Umeshankar defendant Moulsa was benami purchaser at at auction sale effected under fraudulent decrees obtained against plff's (plaintiff's) father Swamirao and proceeded under section 47 of Upp. C. against defendant Nos. 2 and 3 who have lost their right, title and interest over this non-watan land also by omitting to satisfy the said decree after full knowledge of fraud played upon Swamirao as well as the Court.The - actual pruchaser,Shivanappa,defendant No.6 alsocannot set up his title either by virtue of court sale effected under fraudulent decrees or by the subsequent purchase.This land being acquired by plaintiff's grand father Shriniwasrao is family property of the plaintiff.plaintiff is the proper person to set up his title.The possession of the same is sought against them.hence both are necessary parties.The same kind of pleadings are in respect of Jat Inam3.No.9 of Badwadgi.

Defendant No.1 is made a party as its servants under Sanad No.2404 having admitted plaintiff's hereditary deputy -ship as well as his watanship under Sanad 2445 and his seniority in the line of the acquirer of the Sanad No.2404 at the same time without considering the terms of the said Sanads and the essential meaning of the hereditary deputy as well as the impartible nature of the hereditary office and the inclusive meaning of the term" Family" explained in the Watan Act denied firstly to hear the case secondly to register plaintiff's name against the record of the case such as recommendation by the Grant officer S.D. that too against his predecessor's disposal for only - registering the plaintiff's name in respect of lands under

Sanad No.2404 regarding Nidgundi Paragana lands:- non-challenged by both the sets of defendants viz., Shivanappa nominal Watandar and Pandurang as well as Gurunath adverse holders of ~~xxx~~ Nidgundi Paragana lands in respect of plaintiff's watan rights coupled with ownership under the purchase rights of 1876 over Nidgundi Paragana lands in his summary hearing as well as the admitted fact by the High Court of Bombay in their judgment in second Appeal No.865 of 1929 (relied by Shivanappa defendant No.6) to the effect of non-consideration of plaintiff's father's watan rights in the previous litigation so also, the defective nature of the sale cancellation certificate of 1878 - the basic authority of all the decisions including Privy Council against plaintiff's father. Moreover such certificate by the Collector is not a proper document to be relied on as it is exhaustive and the transactions are not annulled by it, under the said section under which it is issued, thirdly to restore the plaint portions on twisting Section 55 into 53 and the claim from the pre-deceased into the deceased and the term' Watandar of the same Watan' ,into the terms watandar of the 'original Watan' .Fourthly to declare plaintiff's rights as watandar of the same watan with defendant Shivshappa as well as - watandar and owner to the plaint portions and to recognise him as representative watandar to his family portions and to register his name in the Collector's respective register and to restore the same under the terms of the plaint Sanads. Thus defendant No.1 improperly sided with the main defendants, and encouraged fraud perpetrated by them. For these reasons defendant No.1 is necessary party. Moreover defendant No.1 is also liable to pay damages of all kinds incurred by the - plaintiff as the defendant No.1's servants failed to exercise their duty namely of granting relief to the plaintiff regarding the above mentioned watan matter which was entirely within their jurisdiction . hereby plaintiff was unnecessarily forced to run from one court to the other since 3-9-1937. Thus there is violent misuse of authority obvious bad faith, reckless

disregard and want on perversion of law on the part of defend-ant No.1's servants and hence defendant No.1 is responsible for all the kinds of damages incurred by the plaintiff.Notice under Section 30 of the C.P.C. issued by the plaintiff has already been accepted by the servants of defendant No.1 on 8-6-1943.Hence defendant No.1 is a necessary party.

The suit is in respect of declaration of title as well as possession of the property with mesne profits therein the value of the plaint is as under;-

Inam Village Wadwadgi,total Survey Nos.142,total area 2115-35,assessment Rs. 1449-8-0,Areshankar village S.Nos 106 total area 2186-4-0,total assessment 980-4-0.Charat land assessed at Rs. 620/- altogether assessment Rs.3070/- Nafa 2300/- due of both the village sites 400/- mesne profits - 263859/- from the date 1-4-33,and collections of villages be ascertained on taking accounts.All together the value of the suit is Rs. 321789/-.

Reliefs to be sought for are:-

It should be declared that plaintiff admittedly being a lenial descendentof the acquirer of Sanad No.2404,has got existing interest of the hereditary character in the entire watan.

Plaintiff olaims a daclaration that the grants and court sales in favour of the plaintiff's father,Shriniwasrao are legal and valid along with the previous grants.

It should be declared that the plaintiff's grand-father's(Shriniwasrao's) ownership under watan rights over Nidgundi Pargana plaint portions has been established prior to the issue of Sanad No.2445 in 1886 to Padappa.

It should be declared that all the decrees etc. against Swamirao Plaintiff's father have been obtained throug fraud and as such have no force.

Plaintiff be allowed the necessary concession for the protection of his legitmate watan rights and paid the - damage incurred due to perpetration of fraud.

It should be declared that plaintiff is entitled
o the benefit of the terms prescribed in the plaint Sanad.

It should be declared that the plaintiff is
s full owner and Inamdar to the plaint portions of both
he parganas in question.

Plaintiff claims a decharation that he is the
ull owner to the documents concerning the watan portions
n dispute.

The Bombay Province or ots servants be directed
o issue certificate under the Provisions of the Pension Act
o the plaintiff, issueable after the declaration of his
atan rights over the entire watans for his claim regarding
ash allowances.

The defendant No.1 or its servants be restrained
y permanent injunction from giving the cash allowances in
uestion to defendant No.6 or his successors.

Defendant No.6 be restrained by permanent injunc-
tion from taking the plaint portions of cash allowances from
efendant No.1 or its servants.

Defendant No.1 or its servants be directed
o amend the respective registers regarding the plaint property
nd enter the name of the plaintiff in respect of the plaint
ortions as holder.

The village officers of Vadwadgi and Areshankar
be ordered to send the Revenue Collections of the said -
villages to the plaintiff and his followers of his successors.

Inamdar's records of the plaint villages be
restored from defendant No.6 since 1887 as well as the
record concerning the plaint portions from Defendant No.2
and 3.

Immoveable places of portions in dispute be
restored from the possession of the respective defendants
without any additional assessment even on the alluvial -
land and free of burden.

All mean profits to which the necessary damages

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thereon be allowed to the plaintiff at least since the death of plaintiff's father Swamirao on 9-12-1932,i.e,, 1-4-1933 from the defendants.

Eggarding plaint portions, the mesne profits together with necessary damages since 9-12-1932 be allow direct from the Government i.e. defendant No.1 provided the defendants are unable to pay the same.

Costs of this suit be allowed to the plaintiff from the defendants responsible to pay the same together with future mense profits in full.

Plaintiff be permitted to take necessary actior against any defendant for his family portions as well as for their remaining dealings of the plaintiff's grand-father, Shriniwasrao.

Plaintiff prays such other indidental reliefs are claimable with respect to the above subject.

The plaintiff is pauper. He has no property of own, except the wearing apparel and has absolutely no money or any property to pay the court fees required fo this suit. Plaintiff prays that he may be permitted to s and proceed with the case in form pauperis.

This suit coming before A.C.Sequeira , Esquire, Civil Judge, Sr.Dn, on 28th July 1948, in the presence plaintiff in person and Messrs K.R.Rao and P.R.Mangoli for defendants Nos. 3,4 and 5 and G. V. Hiremath for defendant No.9, and N.P. and A.M.Desai for defendants N 6,7,8,10,11,12,13,14, and 21 and N.V.Jorapur for defen -ants Nos. 2 and 15.

The court ordered and decreed below:-

The suit fails and is dismissed with costs. The Government to recover the deficit court fee from the plaintiff .A copy of the decree to be sent to the Colledtor.

Recovery of money from plaintiff to Govern--ment.

	Rs.	As.	P.
The Court fee on Rs.321789/-	4593	- 12	- 0
On ehibits 4/,22,28,86,87,88,93,94,96, 97,98,99,100,102,103,113,112,114,115, 122,124,124A,125,126,127,129A,140,143, 144,146,147,148,149,151,154,156,155,157, 158,163,164,165,166,168,202,215,216.	57	- 8	- 0
Total Rs.	4651	- 4-	0

Costs incurred by plaintiff. Defts 3,4,5. Deft No.

	Rs.	A.	P.	Rs.	A.	P.
1. Stamp for plaint.	-	10	-	-	-	1
2. " vakalat.	-	-	4	-	10	-
3. for papers Exhs.	-	-	3. Exhs.1b, 2, 2,10, 2, 2,58, 26, 7, 0, 0, 1,	8	2	- 3. Exhs.27,35, 41,50,53.
4. Subsistance for witnesses.	-	-	4.	-	-	4.
5. Pleader's fees on plaint claim Rs.321753/- double set.	~~37~~	-	5	1918	8	- 5. double set
6. Services of process.	62	8	- 6.	-	-	- 6.
7. Commissioner's fee.			7			7
8. Translation fee.			8			8
9. Copying fee.	3	15	-			9
10. Adjournment costs.	-	-	- 10			10
11. Stamp for application to bring heir of			11			11
	66	2	-	3609	11	0

Costs disallowed for Exhs.	Costs allowed for Exhs.	Disallowed to Exhs.
- - -	8 2 -	
Balance Total 63 - -	Total 3611 13 -	Total

Defts. 6,7,8,10,11,12, 13,14, & 21. | Defts 5 and 15. | Defendant No.1

	Rs. As. P.		Rs. As. P.		s.as.
1	- - -	1	- - -	1	- -
2	- 10 -	2	- 10 -	2	- 10
3. Exhs. 13,20, 32,42,43,50, 31,55.	5 - -	2. Exhs. 15,17, 24, 1.	3 8 -	3. Exhs. 16,23,36, 37,53.	3 8
4.	- -	4.	- - -	4.	- -
5.	1803 8 -	5.	1803 8 -	5.	1808 8
6.	- - -	6.	- - -	6.	- -
7		7		7	
8		8		8	
9		9		9	
10		10		10	
11		11		11	
	1808 8 -		1808 8 -		1808-8
Costs Disallowed. For Exhs.		Costs Disallowed. For Exhs.		Costs Disallowed. For Exhs.	
	5 - -		5 - -		5 8
Total	3777 10 -	Total	1803 8 -	Total	1803-8

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Given under my hand and the seal of the court, this day 28th July 1948.

Sd. M.T.Padvekar,
Clerk.

Sd. A.C.Mecheira,
Civil Judge, Sr. Dn.
5-8-1948.

Sd. K.R.Rao
(D.G.P.)
for Deft No.1

Sd. N.P.Desai,
Pleader,
for Defts Nos. 3,7,9,10,11,
12,13,14 and 31.

The parties to this litigation are hereby informed that the documents if any, produced by them, if not taken, (book) are liable to be destroyed (will be destroyed) after the disposal of appeal, if any, preferred.

Appeal by

"True Copy"

District Govt Pleader
Bijapur

1873/85

Schedule of property.

Village and taluka.	Survey number.	Area.	Assessment.	Yearly income in Rs.	11 years' income.	Damages 12% per-annum.	Claim total.
		Lands standing in the names of defendants nos.2,3 and 4.					
Hamdoli, adami.	157/2	5-7	6-5-0	75-0-0	325-0-0	495-0-0	1320-0-0
	158	2-25	4-11-0	25-0-0	275-0-0	165-0-0	440-0-0
Jahinkunti Huddebihal.	102	1-26	2-8-0	275-0-0	100-0-0	440-0-0	
					1100-0-0	660-0-0	1760-0-0
		Lands standing in the name of Defendant Nos2and 3.					
Kelgur	45	10-6	10-0-0	50-0-0	550-0-0	330-0-0	880-0-0
					550-0-0	330-0-0	880-0-0
		Lands standing in the name of Defendant No.2.					
Hadibhavi.	21	28-6	31-0-0	250-0-0	2750-0-0	1650-0-0	4400-0-0
Hadgindi both in Nagewadi.	49	23-6	25-0-0	200-0-0	2200-0-0	1320-0-0	3520-0-0
	50	24-31	18-0-0	150-0-0	1650-0-0	990-0-0	2440-0-0
	96	5-1	5-8-0	50-0-0	550-0-0	330-0-0	880-0-0
	97	4-26	3-0-0	25-0-0	275-0-0	165-0-0	440-0-0
	98	28-17	26-0-0	200-0-0	2200-0-0	1320-0-0	3520-0-0
	99	19-29	13-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	100	15-22	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	101	25-0	20-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
	102	25-19	19-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	103	28-9	26-0-0	225-0-0	2475-0-0	1485-0-0	1960-0-0
	173	11-11	12-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	174	19-21	20-0-0	175-0-0	1925-0-0	1155-0-0	3020-0-0
	293	13-38	11-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	300/1	9-13	6-0-0	50-0-0	550-0-0	330-0-0	880-0-0
					[illegible]	13695/-	36520/-
		Lands standing jointly in the names of defendants Nos. 3 and 4.					
	50	21-35	23-0-0	200-0-0	2200-0-0	1320-0-0	3520-0-0
	52	1527	16-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	104	16-22	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	107	18-9	16-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0

108	19-5	15-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
109	26-34	21-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
113	20-14	19-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
177	18-3	20-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
181	9-37	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
182	10- 9	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
183	15-16	15-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
272	19-34	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
273	19-36	[illegible]-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
294	15-33	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
300/2	8-26	5-8-0	50-0-0	550-0-0	330-0-0	880-0-0
				20350/-	12210/-	32560/-

Lands standing in the name of defendant no.6.

Wadwadgi of Muddebihal.	84/2	16-16	12-0-0	100-0-0	1100-0-0	606-0-0	1760-0-0

Properties in the possession of defendant no.6.

Hudihal.	29	19-8	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	30	29-39	330-0	275-0-0	3025-0-0	1815-0-0	4840-0-0
Kashinkunti.	51	19-17	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
	107	22-18	24-0-0	200-0-0	2200-0-0	1320-0-0	3520-0-0
	105	23-25	26-0-0	225-0-0	2475-0-0	1485-0-0	3960-0-0
Wadwadgi all of Muddebihal.	2	10-32	6-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	3.	14-29	9-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
	4	28-7	10-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	5	26-27	15-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	6	23-29	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	9	5-35	3-0-0	25-0-0	275-0-0	165-0-0	440-0-0
	10	9- 8	5-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	11	21-39	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	12	21- 8	13-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	13	10- 1	5-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	14	7-31	3-8-0	25-0-0	275-0-0	165-0-0	440-0-0
	17	30-21	21-0-0	175-0-0	1925-0-0	1185-0-0	3080-0-0
	18	22- 4	14-0-0	125-0-0	1325-0-0	825-0-0	2200-0-0
	19	25-37	15-0-0	125-0-0	1325-0-0	825-0-0	2200-0-0
	20	21-24	13-0-0	125-0-0	1325-0-0	825-0-0	2200-0-0
	21	23-30	12-0-0	125-0-0	1325-0-0	825-0-0	2200-0-0

26	23-0	14-0-0	125-0-0	1325-0-0	825-0-0	2200-0-0
27	22-0	11-0-0	125-0-0	1325-0-0	825-0-0	2200-0-0
28	22-19	20-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
30	15-2-	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
34	0-36	0-6-0	5-0-0	55-0-0	33-0-0	88-0-0
35	2- 2	3-8-0	25-0-0	275-0-0	165-0-0	440-0-0
36	4-14	7-0-0	50-0-0	550-0-0	330-0-0	880-0-0
38	4-29	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
39/2	8-17	4-3-0	25-0-0	275-0-0	165-0-0	440-0-0
41	15-11	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
33	10-5	5-0-0	50-0-0	550-0-0	330-0-0	1880-0-0
44	17-27	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
45	16-28	9-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
46	6-19	2-8-0	25-0-0	275-0-0	165-0-0	440-0-0
48	16-30	7-0-0	50-0-0	250-0-0	330-0-0	880-0-0
51	16-5	7-0-0	50-0-0	250-0-0	330-0-0	880-0-0
56	20-2-	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
57	18-13	7-0-0	50-0-0	550-0-0	330-0-0	830-0-0
58	20-11	7-0-0	50-0-0	550-0-0	330-0-0	880-0-0
60	22-4-	7-0-0	50-0-0	550-0-0	330-0-0	880-0-0
62	17 -9	6-0-0	50-0-0	550-0-0	330-0-0	880-0-0
64	12-21	4-0-0	25-0-0	275-0-0	165-0-0	440-0-0
66	16-12	7-0-0	50-0-0	550-0-0	330-0-0	880-0-0
67	10-12	3-8-0	25-0-0	275-0-0	165-0-0	440-0-0
70	10-2	3-8-0	25-0-0	275-0-0	165-0-0	440-0-0
72	18-10	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
73	24-39	12-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
75	8-4-	8-0-0	25-0-0	275-0-0	165-0-0	440-0-0
76	10-24	4-0-0	25-0-0	275-0-0	165-0-0	440-0-0
83	12-19	7-0-0	50-0-0	550-0-0	330-0-0	880-0
86	10-32	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
91	32-34	22-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
92	21-4	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
93	19-23	13-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
94	23-27	16-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
95	30-36	19-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0

	97	18-30	11-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	98	19-16	13-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	99	10- 5	7-0-0	50- 0-0	550-0-0	330-0-0	880-0-0
	100	32-24	22-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
	101	18-31	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	102	17-26	11-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	107	7-3	5-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	108	21-7	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	117	16-18	12-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	120	14-16	2-8-0	25-0-0	275-0-0	165-0-0	440-0-0
	127	17-0	11-0-0	100-0-0	1100-0-0	660-0-0	1700-0-0
	129	12-29	7-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	130	16-3-	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
	131	6-10	3-8-0	25-0-0	275-0-0	165-0-0	440-0-0
	132	8-31	5-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	133	12-25	[illegible]	75-0-0	825-0-0	495-0-0	1320-0-0
	134	8-19	5-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	135	8-19	5-0-0	50-0-0	550-0-0	330-0-0	880-0-0
Areshankur Nagewadi.	13	12-7	3-7-0	25-0-0	275-0-0	165-0-0	440-0-0
	20	40-25	18-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	28	1-38	6-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	34	22-36	9-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
	38	14-12	8-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
	41	26-25	12-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	45	39-24	26-0-0	225-0-0	2425-0-0	1486-0-0	3960-0-0
	46	24-13	17-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	48	17-38	9-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
	50	33-38	20-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
	52	18-23	12-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	53	29-13	18-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	54	27-21	17-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	55	23-8	14-0-0	125-0-0	1375-0-0	825-0-0	2200-0-0
	56	41-3	20-0-0	175-0-0	1925-0-0	1155-0-0	3080-0-0
	57	35-33	17-0-0	150-0-0	1650-0-0	990-0-0	2640-0-0
	62	25-25	27-0-0	225-0-0	2475-0-0	1485-0-0	3960-0-0
	70	25-1	7-0-0	50-0-0	550-0-0	330-0-0	880-0-0
	77	24-36	6-0-0	50-0-0	550-0-0	330-0-0	880-0-0

	79	24-21	15-0-0	125-0-0	1375-0-0	825-0-0	1760-0-0
	80	23-17	12-0-0	100-0-0	1100-0-0	660-0-0	1760-0-0
	87	8-20	3-8-0	25-0-0	275-0-0	165-0-0	440-0- 0
	106	1-17	0-12-0	12-0-0	132-0-0	79-0-0	211-0-0
dgundi.	180	13-37	14-0-0	125-0-0	1375-0-0	325-0-0	2200-0-0

Populated and unpopulated village sites of

Areshankar. Approximate value. Rs. 200/-

of Wadwadgi. " " " 200/-

ch allowances in respect of both the villages.

50 550/-330/880

1013387/- 60832/- 162219/-

Lands standing in the name of defendant No.7.

Wadwadgi	74	6-37	3-0-0	25-0-0	275-0-0	165-0-0	440-0-0
	90	34-30	25-0-0	200-0-0	2200-0-0	1320-0-0	3520-0-0
					2475-0-0	1485-0-0	3960-0-0

Lands standing in the name of defendant No.3.

77	10-30	4-0-0	25-0-0	275-0-0	165-0-0	440-0-0
115/1	13-35	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
				1100/-	660/-	1760/-

Lands standing in the name of defendant No.16.

115-2	13-20	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0

Lands standing jointly in the names of defendants Nos.8 & 9.

	96	40-10	25-0-0	200-0-0	3200-0-0	1320-0-0	3520-0-0
Areshankar.	49	32-38	30-0-0	250-0-0	2750-0-0	1650-0-0	4400-0-0
	47	31-10	30-0-0	250-0-0	2750-0-0	1650-0-0	4400-0-0
					7700/-	4620/-	12320/-

Lands standing in the name of defendant No.10.

Wadwadgi.	16/3	7-15	3-8-0	25-0-0	275-0-0	165-0-0	440-0-0
	59/2	9-17	3-0-0	25-0-0	275-0-0	165-0-0	440-0-0
	104	17-33	11-8-0	100-0-0	1100-0-0	660-0-0	1760-0-0
					1650/-	990/-	3640/-

Lands standing in the name of defendant No.11.

Wadwadgi.	16/1	5-0-0	3-12-0	25-0-0	275-0-0	165-0-0	440-0-0

59/1	3-0-0	3-0-0	25-0-0	275-0-0	165-0-0	440-0-0
				550/	330/-	880/-

Lands standing in the name of defendant No.12.

59/3	8-23	3-0-0	25 -0-0	275-0-0	165-0-0	440-0-0
16-2	5-14	3-12-0	25-0-0	275-0-0	165-0-0	440-0-0
103	15-26	10-0-0	75-0-0	825-0-0	495-0-0	1320-0-0
104/2	16-24	11-8-0	100-0-0	1100-0-0	660-0-0	1760-0-0
				2475/	1485/	3960/-

Land standing in the name of defendant Nos. 13 and 14.

31	16-5-	10-0-0	750-0	825-0-0	495-0-0	1320/-/0
			Grand total	164912/-	98947/-	263859/-

~~Typed by~~

~~Copying Clerk.~~

~~Compared by~~

~~Copying Clerk.~~

" True copy "

Clerk of the Court.
District Court Phalia
Punjab

D.G.P.'s letter No. 693 dt 31-8-1944

91

2719—5,750—11-44—R(b)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ವಿಧ್ಯೂಲ ೧)

ಹುಕುಮುನಾಮೆಯು

ಬೆಳಗಾವಿ - ಇಲ್ಲಿಯ ಅಡಿಶನಲ್ ಸೆಷನ್ಸ್ ಜಡ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು - ಬಾಗಲಕೋಟ - ಇಲ್ಲಿ. ನಿ.ನಂ. 31

ಬೆಳಗಾವಿ ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 10 ಗಳ ನೇ ಪೈಕಿ

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ವಾದಿ)

೧. ಬಲವಂತ ಭೀಮಕಾವ ಪಾಟೀಲ
ಬ್ರಾಹ್ಮಣ ವಯ॥ ಕ್ಲರ್ಕ ಮತ್ತು ಖೋತ
ಅಕಾವಂಬಾ ಅಷೀದ ಚೆಳಗಾಂವ

ವಿರುದ್ಧ

ರೆಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿಗಳು)

(೧) ದಿತ್ತಾ ವಿಠ್ಠಪ್ಪ ಅಂಕಲಗಿ —
(೨) ಯಿರವಗವಡಾ ರುದ್ರಗವಡಾ ಪಾಟೀಲ
ಅಂಕಾಮುಕ್ಕ ವಯ॥, ವಾಚಮುನಾಗಿ ಮುಮುರಡ್ಡಿ
ಕೋಮ್ಟಿ ತಾಲ್ಲೂಕ ಹುಕ್ಕೇರಿ ಅತೀಲಂನಿವರು ಸ್ಟೇಕ್ಸ್.

ಸ್ಟೇಕ್ಸ್. ವಾದಿಯವರು ಬೆಳಗಾವಿ ಇಲ್ಲಿಯ ಅಡಿಶನಲ್ ಸೆಷನ್ಸ್ ಜಡ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೩ ನೇ ಇಸವಿಯ ಮೇ ತಿಂಗಳ 3 ನೇ ತಾರೀಖು ನಂಬರು ೧೧ ನೇದರಲ್ಲಿ ತಾರೀಖು 3 ನೇ ನವೆಂಬರ್ ತಿಂಗಳ ಸನ್ ೧೯೪೩ ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆಯ ಮೇಲಿ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ. ಮೇಲಿ ಹೇಳಿದ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆಯ ಮೇಲ ಅಡಿಶನಲ್ ಜಡ್ಜ ಸಾಹೇಬರ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿ ಜುಲೈ ತಿಂಗಳ 3 ನೇ ತಾರೀಖಿನ ದಿವಸ ಮಿ. N.S. ಮೇವ್ರಾಣಿ ಅಡಿಶನಲ್ ಸೆಷನ್ಸ್ ಜಡ್ಜ ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಮಿ. B. Kambanwad ಇವರ ಮುಖ್ಯತ್ವದಲ್ಲಿ ಹಾಜರಾಗಿರುತ್ತಾರೆ ಮತ್ತು ರೆಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಮಿ. V.R. Rao (Deshpande) ಇವರು ಹಾಜರಾಗಿರುತ್ತಾರೆ ಮತ್ತು ಸದರಿ ಅಪೀಲಿನ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಒಂಪಡ್ಡರ ಮೇಲಿಂದ ಈ ಕೆಳಗಿನ ಹುಕುಮು ನಾಮೆಯನ್ನು ಬರುತ್ತದೆ.

ಅಪೀಲು ಈ ಮೇಲಿನ ರೀತಿಯಲ್ಲಿ ಕೋರ್ಟಿಗೆ ಬಂದಿದೆ

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಥ್ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೬	೪	೦	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	—	—	—	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	೬	೪	೦	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೧೦	—	೦	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ೬೫೬ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೫೬	—	೦	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೫೬		೫೬-೦
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ಸ್ಟ್ಯಾಂಪು..	೧೩	೦	—	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೩೦	೦	೦	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
	೪	೦	೦	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ಒಟ್ಟು....	೪೨	೪	—	ಒಟ್ಟು....	೫೬	—	೫೬-೦

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೬ ತಿಂಗಳು ಜುಲೈ ಸನ್ ೧೯೪೩ ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

Sd/- S.M. Dallawad
ಕಾರಕೂನ
Bench Clerk

Sd/- N.S. Mehrani
ಅಡಿಷನಲ್ ಜಜ್ಜ.

Sd/- A.B. Kankanwadi
ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- R.R. Rao.
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ನೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವನಾದರೂ ದಸ್ತೆವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೆವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಆದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

Certified True Copy

K. Nilu
Asstt. Govt. Pleader
Bijapur

95 [illegible]

Suits:
Bijapur.
For restoration of Pargana Watan lands and for a declaration that plaintifl is the watandar of the same watan as defendant No. 6.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7819
Bombay Castle, 20th October 1948.

Read G.R., Legal Department, No. 3872 dated the 23rd May 1946.

Endorsement from the District Government Pleader, Bijapur, No. 597 dated the 28th July 1948, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on 28th July 1948, when the following order was passed :-

"Dismissed with costs."

In the Court of the Civil Judge, Senior Division, Bijapur.
Civil Suit No. 48 of 1945.

Venkatesh Swamirao Deshmukh of Yalgur. ... ..Plaintiff.
versus
The Province of Bombay and 19 others. ... Defendants.

Claim - Rs. 2,31,562.

Letter from the District Government Pleader, Bijapur No. 677, dated the 21st August 1948, forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,
Original R. M. Mehta
R. M. Mehta
Assistant Secretary to Government.

Issued
20/10

To
The Revenue Department,
The Commissioner, S.D.,
The Collector of Bijapur.

B/19.10
Subd for orgn
Orders at p 4
20/10

97 199

Suits:
Bijapur.
For restoration of Pargana Watan lands and for a declaration that plaintiff is the watandar of the same watan as defendant No. 6.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1485

Bombay Castle, 8th February 1949.

Read Government Resolution, Legal Department, No. 9819, dated the ~~10th~~ 10th October 1949.

Letter from the Collector of Bijapur No.LAW-176, dated the 26th January 1949, requesting sanction to the defence of First Appeal No. 483 of 1948, in the High Court, Bombay, filed by the plaintiff in the suit noted in the margin and forwarding case papers.

In the Court of the Civil Judge,
Senior Division, Bijapur.
Civil Suit No. 48 of 1945.

Venkatesh Swamirao
Deshmukh of Yalgur - - Plaintiff.
Vs.
The Province of Bombay
and 19 others. - - - Defendants

Claim - Rs.2,31,562/-

RESOLUTION:- Sanction is accorded to the defence of First Appeal No. 483 of 1948, in the High Court, Bombay, on the lines of the brief accompanying Government Resolution, Legal Department, No. 3872, dated the 23rd May 1946, and the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Bijapur, dated the 28th July 1948.

By order of the Governor of Bombay,

Original

R. M. Mehta.

R. M. MEHTA,
Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Bijapur,
The Government Pleader, High Court, Bombay (with papers of the case received from the Collector).

8KAM.3.2.49.

97/205

In His Majesty's High Court of Judicature at Bombay.

First Appeal No. 483 of 1948.

(In forma pauperis.)

1. Venkatesh Swamirao Deshmukh of Samat Parvati and Pargana Nadgundi, Brahmana, age 65, Occupation begging residing at Yalgur, Taluka Muddbihal, Dist. Bijapur. .... Appellant. (Ori.Plaintiff.)

Versus

1. The Province of Bombay
2. Pandurang Shrinivas Parvati Brahmin, age 27 occupation Agriculture, resident Nidgundi Tal. Bagewadi, Dist. Bijapur.
3. Gurunath Swamirao Parvati, Brahmin age 50 occupation agriculture, residence Nidgundi, Taluka Bagewadi.
4. Narayan Gurunath minor by guardian, father Gurunath Swamirao, age 10, Brahmin, occupation student, residence Nidgundi, Taluka Bagewadi by guardian father R^d.No.3 Gurunath.
5. Venkatrao Parvatrao Parvati, Brahmin ,age 60 occupation Pleader, redidence Bijapur.
6. Shivanappa Yelgurdappa Desai, Chatriya Hindu age 45, occupation land-lord, residence wadwadgi, Taluka Muddebihal.
7. Chandramappa Yalgurdappa Desai, Chatriya Hindu Age 48, occupation Agriculture, residence Wadwadgi, Taluka Muddebihal.
8. Chansangappa Balappa Desai; Chatriya, age 28 occupation Agriculture, residence Wadwadgi, Taluka Muddebihal.
9. Bhujangappa Appasaheb Desai, Chatriya age, 38, occupation agriculture, Offg. Patil of Kotical at Kotikal, Taluka Badami.

10. Yagurdappa Erappa Nisbat Desai, age 30 Hindu occupation Agriculture, residence Wadwadgi.

11. Ramchandra Erappa Nisbat Desai, Hindu age 27, occupation agriculture, redidence Wadwadgi.

12. Erabasappa Erappa Nisbat Desai, age 24, Hindu occupation Agriculture, redidence Wadwadgi.

13. Moulasa Imamsa Walikar, Mohamadan, age 40 occupation agriculture, residence Wadwadgi.

14. Budesa Imamsa Walikar, Mohamamadan, age 35, occupation agriculture, residence Wadwadgi.

15. Tulsabai kom Venkatrao Kulkarni age 42, occupation House-hold affairs, residence Nidgundi.

16. Karigoudappa Sultanappa Beradar, Handelavar, age 48, occupation Agriculture, residence Wadwadgi.

17. Ramchandrappa Yerbhadrappa Pattar, Panchal age 55, occupaton Agriculture, residence Balbatti.

18. Basappa Sarabanna Baligar, age 35 Hindu occupation Merchantile, residence Guledgud, Taluka Badami.

19. Tippanna Sarbanna Baligar, Hindu age 32, occupation Merchant, residence Guledgud.

20. Huchappa Sarbanna Baligar, Hindu, age28, Occupation Merchant, residence Guledgud, Taluka Badami.

21. Irappa Yelagurdappa Nisbat Desai Vadvadgi, Taluka Muddebihal, age 55, mukhtyar of Deft.No.6. -Respondents. (Ori.Defendants.)

Claim Rs.321789/- for both purposes

The appellant above named humbly beg to appeal to this Honible High Court, in forma paupenis (approved by the Lower Court), from the decree of the Civil Judge, Senior Division at Bijapur, in special Suit No.48 of 1945.

The grounds of objections to the decision appealed

1. The decision of the lower Court is contrary to the the facts, law and evidence in the case and covers not the entire claim.

2. The Lower Court erred in completely ignoring the sanad Ex. No 162 and G.R No. 3340 of 1909, Ex. 206 and the implications arising therefrom.

3. The lower court failed to appreciate the nature of acquisition of portions claimed.

4. The lower Court erred in attaching imprtance to the Privy Council decision only, for the reasons mentioned hereafter.

5. The lower court failed to percive the Govt. resolution No. 3340 of 1909, which not only removes the bar of Resjudicata arising from the decision of the Privy Council, but estopples both the parties, then under litigation namely defts. 2, 3 & 4 from sticking to the vatan rights under Sanad No. 2404 Ex. 162 and deft. No. 6 from denying the force of the Court sale of the plaint. Villages. More so if it (G.R No. 3340 of 1909) were read with Ex. 162.

6. The Lower court failed to conclude from these three Authorities, that the previous litigations have been on wrong lines.

7. The lower court erred in attaching importance to the findings in the previous proceedings framed under wrong impressions.

8. The lower Court erred in not taking into consideration of the loop-holes in the W.S. of the respective defendants pointed out by the Plff's counter W.S. Ex. 88.

9. The lower Court failed to appr ciate that the judgment in second appeal No. 865 of 1929 Ex. 225 passed against plff's father and Second appeal No. 223 of 1931 passed against Deft Nos. 2 & 3 Ex. 227 were given in second class suits, and therefore

the present suit cannot be barred by the principle of resjudicata by Ex. 225, much less by Ex. 227.

10. The lower Court erred in holding that the Privy Council decision (24 Bom. 556) barss the present suit.

11. The lower Court failed to appreciate the facts that the cause of action in present suit is different, The subject matter is different, the issues are different and the position of the parties are different.

12. The legal effect of the partition award decree between the plaintiff on the one hand and plff's father together with deft No. 2's father and deft No. 3 on the other has been completely misunderstood by the lower court.

13. Issue No. 12 (estopple by partition) has been wrongly dealt with issues Nos. 5 and 6 (resjudicata) by the lower Court.

14. The lower Court failed to appreciate the fact a that the present plff, does not claim through his father, the share offerer and that therefore the partition award decree as well as the decisions against Swamirao are not binding on the plaintiff.

15. The lower Court erred in rejecting the plff's contention that he was entitled conclusively to the plaint portions by virtue of the rule of lenial primogeniture .

16. The lower Court completely overlooked the provision of sections 4, 36 and 56 and other sections of Vatan act.

17. The lower court erred in holding that the plaintiff is a Vatani karkun and therefore could not be vatandar of the same vatan,

18. The lower court erred in holding that because the services were commuted the plff vatani karkun was not a watandar of the same vatan.

19. The lower court has confused the terms vatandar of of the same vatan and member of the same family "

20. The relevant resolutions of the Govt. have not been considered by the lower Court.

21. The lower court erred in not exhibiting the fundamental document produced by the parties.

23. The lower court totally ignored the documentary evidence produced by the plaintiff in support of all sorts of his contention.

24. The lower court failed to observe that the circumstancial evidence alone is sufficient to prove the exhistance of fraud and that the sanad EX. 162 is the starting link to such circumstancial evidence in this case.

25. The lower court wrongly lost the the opportunity of collecting circumstancial evidence in not subjecting the parties to cross examination.

26. The lower court erred in not passing orders under order 11 Rule 21 of C.P.C. against the defendants for non production of documents m though requested.

27. Proper issues have not been framed though suggested twice.

28. The lower Court ought to have declared that plff. is vatandar by virtue of sanad No. 2404 and that plff is vatandar of the same vatan as deft. 6 holder of sanad No. 2445 by virtue of both these sanads.

29. The plea of adverse rights by the defendants supports the ownership of the plaintiff by virtue of sections 4 and 26 of vatan act.

30. The lower court ought to have decreed the plff's suit on the strentgh of G.R. No. 2140 of 8-6-1864 read with the terms prescribed in the plaint samd (2404 and 2445).

31. The procedure adopted by the lower court is against the spirit of the C.P.C.

32. The order as regards costs also is wrong.

Bombay.
30th August 1948.

Sd. V.S. Deshmukh
Appellant.

Application for copy applied for on 6-2-52
Copy ready on 10-6-52
Copy delivered on 8-7-52
Sent by V. P. P. Regd. Post on 10/5/22
Shirastedar
Assistant Sheristedar

APPEAL No. 483 OF 1948 FROM ORIGINAL DECREE.

(*In forma Pauperis*)

Venkatesh Swamirao Deshmukh (Original Plaintiff) ... ... Appellant;

versus

The Province of Bombay, and others (Original Defendants) ... Respondents.

Appeal against the decision of A. C. Sequeira, Esquire, Civil Judge (Senior Division), at Bijapur, in Special Suit No. 48 of 1945.

Mr. Venkatesh Swamirao Deshmukh, the Appellant in person.

The Government Pleader for Respondent No. 1.

Mr K. G. Datar, Advocate for Respondents Nos. 2, 6, 7, 10, 12, 13 and 21.

Mr. N. S. Anikhindi for Mr. N. M. Hungund, Advocate for Respondents Nos. 3 to 5.

Mr. B. M. Kalagate, Advocate for Respondent No. 9.

(CORAM :—Chagla, C. J., and Gajendragadkar, J.)

29th January 1952.

Oral Judgment (*per Gajendragadkar J.*).—The dispute which gives rise to this appeal is being fought between the parties for more than 75 years past. There have been several suits, appeals and other proceedings carried on from generation to generation, and it is not certain that this protracted litigation is likely to end with the present appeal.

The appellant commenced the present suit on the plea that the several decrees which had been passed against his father were obtained by fraud and were otherwise not binding on him. He also alleged that he was a representative *Vatandar* of the suit property, and he claimed a declaration that, as such, he was the owner of the property. The suit further included a claim for a certificate under the Watan Act, as well as a claim for possession of the property with costs and future mesne profits. The trial Judge has held that the plea as to fraud is not proved, and that, on the merits, the claim is barred by *res judicata*. The plaintiff, who has filed the suit as a pauper, has been allowed to present this appeal in *forma pauperis*; he has argued the case in person and has filed a typed copy of his written arguments for our perusal.

In order to appreciate the plea of *res judicata*, which has been effectively raised against the plaintiff in the present suit and against his predecessors in former litigations, it would be necessary to mention some facts in regard to the course that this long-standing litigation has taken during the last over three-quarters of a centuary. The property in suit consists of two villages, Wadwadgi and Areshankar. One Bhujangrao was the holder of this *watan* property. At his death, he left two widows, Kalawa and Ramawa. On 15th September 1865, Kalawa mortgaged these two villages to Srinivas, the grandfather of the present plaintiff. She created a further charge on the same properties for consideration. Srinivas had also advanced some monies to her, and, as such creditor, he sued her to recover the amount due : this was Civil Suit No. 203 of 1870. A decree was passed in this suit, and, in execution, Kalawa's right, title and interest in the properties was put to sale and purchased by the decree-holder himself. The decree-holder then proceeded to file Civil Suit No. 59 of 1873 to recover possession of these properties as auction-purchaser, and in 1875 he succeeded in obtaining possession of the two villages. Meanwhile, in 1872, Padappa, the son of Ramawa by Bhujangrao, sued Srinivas, Kalawa and Balappa, who claimed to have been adopted by Kalawa, and claimed a declaration that Padappa himself was the legitimate son of Bhujangrao and

Superintendent, Decree Department. 10-6-1952.
Rs.As.Ps. (Fls.17)
Copying and comparing charges. 6 -6 -0
Total Rs. 6 -6 -0
Total Rupees six and annas six only.
K. 104.

that the adoption of Balappa alleged to have been made by Kalawa was invalid : this was Suit No. 1299 of 1872. The suit was decreed, and the decree was ultimately confirmed by this Court in second appeal. In pursuance of this decision, in 1878 the Collector cancelled the sale with regard to the village of Wadwadgi under the watan Act. In 1887, Padappa proceeded to sue the sons of Srinivas, amongst whom was included the plaintiff's father Swamirao ; and in this suit, Padappa claimed that the mortgage passed by Kalawa in favour of Srinivas was void and that he was entitled to be in possession of the properties covered by the said mortgage. This suit was decreed in the trial Court, but on appeal the mortgagees succeeded. This judgment is reported in *Swamirao* vs. *Padappa Bin Bhujangrav* (*1892*), I.L.R. 18 Bom. 22. Padappa, however, did not accept this decision and went in appeal to the Privy Council, and his appeal was allowed (*Padappa* vs. *Swamirao* (1900), I.L.R. 24 Bom. 556). It was held by the Privy Council that the mortgage was void and not binding on Padappa,and that he was entitled to the possession of the two villages purported to have been mortgaged to Srinivas by Kalawa. This judgment was delivered on the 16th of February 1900.

Thereafter several suits and proceedings were started by the mortgagee's heirs against Padappa, and they came to this Court in second appeal. But in none of them the mortgagees succeeded. Two of these second appeals must be mentioned in dealing with the present appeal. In 1932, this Court, in Second Appeal No. 865 of 1929, had to consider the claim made by the plaintiff's father in respect of the right to recover the assessment of the two villages as auction-purchaser in execution proceedings held in Civil Suit No. 203 of 1870. Mr. Justice Baker, who heard this second appeal, dismissed it on 25th February 1932. The point raised before Mr. Justice Baker was that, in the earlier litigation which had gone up to the Privy Council, the rights acquired by the mortgagee as auction-purchaser had not been considered, and that the said rights were, in fact, unaffected by the decision of the Privy Council. The argument was that, though the mortgage executed by Kalawa may be invalid, the rights which the mortgagee acquired by reason of the auction-sale held in execution of the decree passed in Civil Suit No. 203 of 1870 did not suffer from any infirmity. It was conceded before Mr. Justice Baker that this argument would not be available in respect of the village of Wadwadgi because the sale in regard to this village had been set aside by the Collector under the Watan Act in 1878. As to the auction-purchaser's right to recover the assessment of the village of Areshankar, Mr. Justice Baker realised that this point was not expressly considered in the earlier litigation ; but he examined the pleadings in the said litigation and the issues framed therein, and he held that the claim which the plaintiff was making in the appeal before him should and ought to have been made in the earlier litigation and that the said claim was barred by *res judicata*, under Explanation 4 to section 11 of the Civil Procedure Code. After this litigation thus ended in the dismissal of the plaintiff's claim, other proceedings were commenced, and they came in three second appeals to this Court in 1935 : they were Second Appeals Nos. 223, 224 and 232 of 1931. In this litigation, the plaintiff started a new point of adverse possession. His case was that the rights which he had acquired as aucion-purchaser, as well as the rights which had accrued to him by virtue of adverse possession, were not affected by the decision of the Privy Council in *Padappa* vs. *Swamirao ;* and he contended that, since Srinivas was the *watandar* of the same *watan*, the auction-sale in his favour was valid and the rights obtained by him under the said sale could not be challenged. Mr. Justice Broomfield, who heard these appeals, again referred to the whole history of the litigation ending in the judgment of Mr. Justice Baker, and held that the plaintiff's claim was barred by *res judicata*. Mr. Justice Broomfield's judgment was delivered on the 14th of January 1935.

Undaunted by all these decisions, which have consistently rejected his claim, the present suit has been filed by the plaintiff on the 19th of April 1945, and, as I have already mentioned, it has been rejected by the learned Judge on the ground of *res judicata*. It is obvious that the plaintiff has completely failed to substantiate his plea of fraud. On the contrary, the plea of fraud taken after so many years, when the original decree passed by the Privy Council has been the subject-matter of litigation on several occasions, can have no possible substance in it. No evidence was led in support of this plea, and the learned Judge has very rightly rejected it. As to the claim made by the plaintiff that his predecessors were *Watandars* of the same *watan*, and that both the mortgage and the auction-purchase in their favour was not invalid, the position is the same as it was in the litigation that came before Mr. Justice Baker and Mr. Justice Broomfield. *It is* easy to understand the layman's difficulty in appreciating the view that his plea is barred by constructive *res judicata*. The plaintiff, who argued the appeal in person before us, attempted to emphasize the fact that the points which he was raising before is had never been expressly raised in the earlier litigation which went to the Privy

Council, and he impressed upon us the justice of his claim that these points should be considered on the merits. Unfortunately, the rule of *res judicata* is technical, particularly in so far as it is deducible from Explanation 4 to section 11 of the Code of Civil Procedure, and it admits of no exceptions. Having regard to the pleadings and the issues that were framed in the earlier litigations between the parties, there can be no doubt that the grounds which the plaintiff is urging before us in the present litigation could have been urged by him in that litigation by way of defence. And if he failed to urge those points, he would be precluded from raising them again in a subsequent suit. In fact, the question as to whether these pleas are barred by constructive *res judicata* or not is itself clearly barred by the decisions of Mr Justice Baker and Mr. Justice Broomfield. In that view, it is unnecessary to consider the merits of the several points urged by the plaintiff in the written arguments which he has supplied to us. It is clear that the fight for these properties has been valiantly and ceaselessly conducted by the plaintiff and his predecessors. But, unfortunately for them, the decision of the Privy Council in *Padappa* vs. *Swamirao* has, in effect, concluded the conflict, and the victory has gone to Padappa and his successors for all time in regard to the properties with which we are concerned. Every time that Srinivas or his successors raised the same dispute, they have been uniformly told by the Courts that their claims are barred by *res judicata*. It seems to us that we can make no other answer to the present claim.

The result is, the appeal fails and is dismissed. There will be no order as to costs of the respondents.

Since the appeal fails, the appellant will have to pay Court-fees which he would have had to pay if he had not been allowed to appeal as a pauper.

By order of the Court,

Exd. by:—G. M. M.

(Signed) V. R. GADKARI,

for Deputy Registrar.

True Copy.

for Deputy Registrar.

The 10th day of June 1952.

BOMBAY : PRINTED AT THE GOVE

K. 10

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Paper charges. 0-0-9

Total 6-0-9

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28 -5-1952
Examined by D.R. Gokarn
Read by P.G.Vyas.

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A.P.Vajnik
Superintendent D.D.
30-5-1952

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Assistant Sheristedar

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

In the High Court of Judicature at Bombay.

Tuesday the 29th day of January 1952.

Appeal No. 483 of 1948 from Original Decree.

(In Forma Pauperis).

1. Venkatesh Swamirao Deshmukh ... ... Appellant.
(Original Plaintiff).

versus

1. The Province of Bombay.
2. Pandurang Shrinivas Parvati.
3. Gurunath Swamirao Parvati.
4. Narayan Gurunath minor by guardian father Gurunath Swamirao Res. No.3.
5. Venkatrao Parvatrao Parvati.
6. Shivanappa Yelgurdappa Desai.
7. Chandramappa Yalgurdappa Desai.
8. Chansangappa Balappa Desai.
9. Bhujangappa Appasaheb Desai.
10. Yalgurdappa Erappa Nisbat Desai.
11. Ramchandra Erappa, Nisbat Desai.
12. Erabasappa Erappa Nisbat Desai.
13. Moulasa Imamsa Walikar.
14. Budesa Imamsa Walikar, Mohammadan,
15. Fulsabai-kom-Venkatrao-Kulkarni.
16. Karigoudappa-Sultanappa-Beradar.
17. Ramchandrappa-Veerbhadrappa-Pattar.
18. Babappa--Sarabanna-Baligar-age-25
19. Tippanna--Sarbanna-Baligar.
20. Huchappa--Sarbanna--Baligar-,-Hindu
21. Irappa-Yelagurdappa-Nisbat-Desai- ... Respondents.

Names of respondents Nos. 15 to 21 struck off vide Court's order dated 22-1-52 on the farad.

1 to 14

(Original defendants).

Claim Rs. 3,21,789 for both purposes.

The plaintiff sued (1) for a declaration that he is the representative Vatandar of the suit property (2) that the decrees etc. obtained against his father are not enforceable and for a declaration that he is the owner of the suit property and for directing the defendant No.1 and his servants to issue certificates under the Watan Act in favour of the plaintiff and for recovery of possession of the same with past and future mesne profits and costs of the suit.

The Original Special Suit No. 48 of 1945 was decided by the Civil Judge (Senior Division) of Bijapur who dismissed it with costs and ordered Government to recover the deficit Court fee from the plaintiff which was required to pay if he had not been allowed to sue as a pauper.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Gajendragadkar on the 23rd day of November 1948.

The grounds of objection to the decision appealed against are :-

1. The decision of the lower court is contrary to the facts, law and evidence in the case and covers not the entire claim.

2. The lower court erred in completely ignoring the Sanad exhibit No. 162 and G.R.No. 3340 of 1909 , exhibit 206 and the implications arising therefrom.

3. The lower court failed to appreciate the nature of acquisition of portions claimed.

4. The lower court erred in attaching importance to the Privy Council decision only, for the reasons mentioned thereafter.

5. The lower court failed to perceive the Government resolution No. 3340 of 1909, which not only removes the bar of Res judicata arising from the decision of the Privy Council, but estoppels both the parties, then under the litigation namely defendants Nos.

2,3 and 4 from sticking to the vatan rights under Sanad No. 2404 exhibit 162 and defendant No. 6 from denying the force of the Court sale of the plaint villages, More so if it (G.R. No. 3340 of 1909) were read with exhibit 162.

6. The lower court failed to conclude from these three authorities , that the previous litigations have been on wrong lines.

7. The lower court erred in attaching importance to the findings in the previous proceedings framed under wrong - impressions.

8. The lower court erred in not taking into consideration of the loop holes in the W.S. of the respective defendants pointed out by the plaintiff's counter W.S. ex. 88.

9. The lower court failed to appreciate that the judgment in second Appeal No. 865 of 1929 exhibit 225 passed against plaintiff's father and Second appeal No. 223 of 1931 passed against defendant's Nos. 2 and 3, exhibit 227 were given in second class suits, and therefore the present suit cannot be barred by the principle of resjudicata by exhibit 225, much less by exhibit 227.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

10. The lower court erred in holding that the Privy Council decision (24 Bom. 556) bars the present suit.

11. The lower court failed to appreciate the facts that the cause of action in present suit is different. The subject matter is different, the issues are different and the - position of the parties are different.

12. The Legal effect of the partition award decree between the plaintiff on the one hand and plaintiff's father together with defendant No. 2's father and defendant No. 3 on the other has been completely misunderstood by the lower court.

13. Issue No. 12 (estoppel by partition) has been wrongly dealt with issues Nos. 5 and 6 (res judicata)by the lower court.

14. The lower court failed to appreciate the facts that the present plaintiff does not claim through his father, the share offerer and that therefore the partition decree as well as the decisions against Swamirao are not binding on the plaintiff.

15. The lower court erred in rejecting the plaintiff's contention that he was entitled conclusively to the plaint portions by virtue of the rule of lenial primogeniture.

16. The lower court completely overlooked the provision of sections 4,36 and 56 and other sections of the vatan Act.

17. The lower court erred in holding that the plaintiff is a vatani Karkun and therefore could not be vatandar of the same vatan.

18. The lower court erred in holding that because the services were commuted the plaintiff vatani karkun was not a watandar of the same vatan.

19. The lower court has confused theterms vatandar of the same vatan and member of the same family.

20. The relevant resolutions of the Government have not been considered by the lower court.

21. The lower court erred in not exhibiting the fundamental document produced by the parties.

22. The lower court totally ignored the documentary evidence produced by the plaintiff in support of all sorts of his contention.

23. The lower Court failed to observe that the circumstantial evidence alone is sufficient to prove the existence of the fraud and that the Sanad exhibit 162 is the starting link to such - circumstantial evidence in this case.

24. The lower court wrongly lost the opportunity of collecting circumstantial evidence in not subjecting the parties to cross - examination

25. The lower court erred in not passing orders under Order 11 rule 21 of C.P.C against the defendants for non production of documents though requested.

26. Proper issues have not been framed though suggested twice.

27. The lower court ought to have declared that plaintiff is Vatandar by virtue of Sanad No. 2404 and that plaintiff is vatandar of the same vatan as defendant 6 holder of Sanad No. 2445 by virtue of both these Sanads.

28. The plea of adverse rights by the defendants supports the ownership of the plaintiff by virtue of sections 4 and 26 of Vatan Act.

113
233 +1

29. The lower court ought to have decreed the plaintiff's suit on the strength of G. R. No. ~~2410~~ 2140 of 8-6-1864 read with the terms prescribed in the plaint sanad (2404 and 2445).

30. The procedure adopted by the lower court is against the spirit of the C.P.C.

31. The order as regards costs also is wrong.

Coram :- Chagla C.J. and Gajendragadkar, J.

For the reasons stated in the accompanying judgment, the Court confirms the decree of the lower court and dismiss the appeal.

No order as to costs of the respondents.

The Appellant to pay to Government the Court fees which he would have had to pay, if he had not been allowed to appeal as a pauper.

29th January 1952. Sd. S.H. Belavadi.
Deputy Registrar.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

Bill of Costs in the High Court.

		Rs.As.Ps.
By the appellant.		
Pauperis	Stamps for Memorandum of appeal.	4093-12-0
	Stamps for copies of decree and judgments.	1-14-0
	Stamps for Vakalatnama.	2-8-0
	Bhatta for process.	70-0-0
	Sectioner's fee.	35-10-0
	Advocate's fee (in person)	0-0-0
	Printing charges.	11-0-0
	Copying charges for preparing paper books.	12-0-0
	Stamp for affidavit.	1-0-0
	Search fee.	1-0-0
	Total	4228-12-0

By respondent-No. The appellant to pay to the Government Rs. 4095-10-0 (Rupees four thousand and ninty five and annas ~~xxxx~~ ten only) Rs. 4093-12-0 on the ~~xx~~ memo and Rs. 1-14-0 on the copies) which he would have had to pay had he not been allowed to appeal in forma pauperis.

By respondent No. 1.	Rs.As.Ps.
Stamps for Vakalatnama (The Govt. Pleader appears)	0-0-0
Advocate's fee.	1898-15-1
Copying fee under Rule 111 of the High Court Appellate Side rules 1936.	10-2-0
Total	1909-1-1

By respondents Nos. 2,6,7,10,12,13	Rs.As.Ps.
Stamps for Vakalatnamas.	5-0-0
Advocate's fee.	1898-15-1
Total	1903-15-1

By respondents 3 and 5.	Rs.As.Ps.
Stamps for Vakalatnama.	2-8-0
Advocate's fee	1898-15-1
Total	1901-7-1

By respondent No. 9.	Rs.As.Ps.
Stamps for Vakalatnama.	2-8-0
Advocate's fee.	1898-15-1
Total	1901-7-1

(Seal) Sd. S.H. Belavadi.

Deputy Registrar.

The 29th day of January 1952.

True Copy

for Deputy Registrar.

The 30th day of May 1952

Suits:
Bijapur.
for restoration of Pargana Watan lands and for a declaration that plaintiff is the watandar of the same watan as defendant No.6.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 13224
Bombay Castle; 12th August 1952.

Read Government Resolution, Legal Department No.1485 dated the 8th February 1949.

Letter from the Government Pleader, High Court, Bombay No. 2344 dated the 20th March 1952, stating that the First Appeal No.483 of 1948 in the suit noted in the margin was decided by the High Court of Judicature at Bombay, on the 29th January 1952, when the following order was passed:-

In the Court of the Civil Judge, Senior Division, Bijapur.
Civil Suit No.48 of 1945.
Venkatesh Swamirao Deshmukh, of Yalgur..... Plaintiff.
versus.
The Province of Bombay and 19 others..... Defendants.

" The result is, the appeal fails and is dismissed. There will be no order as to costs of the respondents.
Since the appeal fails, the appellant will have to pay Court-fees which he would have had to pay if he had not been allowed to appeal as a pauper."

Letter from the Government Pleader, High Court, Bombay No.5186 dated the 18th July 1952 forwarding certified copies of the judgment and decree.

RESOLUTION: The result of the First Appeal No.483 of 1948 is recorded.

By order of the Governor of Bombay,

Original R.T.Katarki
R.T.Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The Government Pleader, High Court, Bombay,
The District Government Pleader, Bijapur.

KML/11

Subd. for sign
11/8/52
D.S.(civil)